I know this is not the place to speak of his family life, but I cannot refrain from making this brief reference: Love and affection, one toward another, were the continuous forces which bound that sacred circle in deathless tie; and when the end came, they were at his bedside to bid him farewell. With John Bunyan, as he envisioned the end of a Pilgrim’s Progress, they doubtless said: “So Valiant-for-truth passed over, and all the trumpets were sounded for him on the other side.”

SIXTH DAY

Continued

(Monday April 28, 1941)

The Senate met at 10:00 o’clock a.m. and was called to order by the President.

Senate Resolution 113

Senator Beck, by unanimous consent, offered the following resolution at this time:

Whereas, The Honorable H. M. McCastlain, a prominent member of the Arkansas State Legislature from Monroe County, is in the Capitol accompanied by Mrs. McCastlain; and

Whereas, The State of Texas has a great affection for its sister state of Arkansas and admiration for its public officials; therefore, be it

Resolved by the Senate of Texas, That Representative and Mrs. McCastlain be extended the courtesies of the Senate with an invitation to have seats within the bar.

The resolution was read, and by unanimous consent it was considered and adopted at this time.

Senate Resolution 114

Senator Lemen, by unanimous consent, offered the following resolution at this time:

Whereas, The Senior Class of Abbott High School, accompanied by Mr. L. H. Raymer Principal, and Miss Gracie Watson, Sponsor of the Senior Class, is within the Capitol Building; and

Whereas, This distinguished group is making an educational tour of this part of the State; and

est arm of the government and substituting therefor a government of men in lieu of a government of laws. Since then, death and retirement have solved the President’s problem; but the question of ulterior motives has been removed.

Walter Woodward was an avid reader of history and current events. He had viewed the course pursued by dead nations of the past, and had discerned the seeds of their destruction. The sweep of his imagination had led him to the Acropolis at Athens, and with Pericles he had envisioned the glories and the fall of ancient Greece. He saw Athens go down, together with the last vestige of what was once the most fascinating city in the ancient world. He sat in the galleries of the Roman Senate, and from this vantage point he observed the decay and final eclipse of the Empire and the Republic.

With the blind Milton, he watched the Anglo-Saxon race, as it wrested the great charter from King John at Runnymede, and with it the four cardinal principles, upon which all our liberties rest: Freedom of conscience, freedom of religion, freedom of speech, and freedom of the press. And he fought for the preservation of all of them to his dying day.

Taken all in all, Walter Woodward was a great lawyer, an upright citizen and a true friend. His acts of kindness and courtesy were not extended for the purpose of compensation; and if they were repaid in kind, the person so reciprocating would be blessed by him a thousand fold. His desire was to always impart more of the joy of life than he received from others; and in that way he inevitably reaped a rich reward. In his passing, the people of his native State have suffered an irreparable loss; and the bar and judiciary of this section will miss him more and more as time goes on. There is nothing more that we could say that would add to his golden graces. We are saddened by the fact that his soul has been released from the clay which bound it here; and we can only hope that it has found a better home. With his father and other great immortals with whom he associated in childhood and young manhood, may he find peace enduring in a land of eternal sunshine and unfading flowers for which a life of service had made him worthy.
Whereas, It would be of great value to this Class to observe the Senate of Texas in session; now, therefore, be it

Resolved, That the Senate express its appreciation of having these visitors and that the Senior Class of the Abbott High School be extended all privileges of the galleries for the day; and be it further

Resolved, That a copy of this resolution be sent to Mr. L. H. Raymer, Principal Abbott High School, and that another copy be delivered to Miss Gracie Watson, Senior Sponsor, Abbott High School.

LEMENS, VICK.

The resolution was read, and by unanimous consent, it was considered at this time and was adopted.

Memorial Ordered Printed in Journal

On motion of Senator Moore and by unanimous consent, a memorial to the Hon. John Henry Kirby was ordered printed in the Journal.

[The full text of the memorial appears on pages 1081-1100 of the Journal.]

Committee Substitute House Bill 8 on Passage to Third Reading

The Senate resumed consideration of the pending special order, same being C. S. H. B. No. 8, known as omnibus tax bill, on its passage to third reading; with motion pending by Senator Mauritz to reconsider the vote by which the amendment (53) by Senator Shivers to Article XIV of the bill was adopted.

Question—Shall the motion to reconsider prevail?

Executive Session

On motion of Senator Martin, and by unanimous consent, the Senate, at 10:30 o'clock a. m., agreed to hold an executive session at 10:31 o'clock a. m., today.

Accordingly, at 10:31 o'clock a. m., the President ordered the floor and galleries cleared of all those not entitled to attend the executive session and ordered all doors leading from the Senate Chamber closed.

After Executive Session

At the conclusion of the executive session, the Secretary of the Senate informed the Journal Clerk that no final action had been taken by the Senate in executive session.

The President called the Senate to order as in legislative session at 11:10 o'clock a. m.

Messages from the Governor

The President laid before the Senate, and had read, the following messages:

Austin, Texas, April 23, 1941.

To the Members of the Forty-seventh Legislature:

I wish to call your attention to H. B. No. 454, by Walters, which is a bill creating a Merit Council to administer personnel standards on a merit basis for the Texas Unemployment Compensation Commission and the State Department of Public Welfare, both of which departments receive grants from the Federal government.

Title 42, Section 302(a) provides as follows:

“(a) A state plan for old age assistance must * * * (5) provide such methods of administration (including after January 1, 1940, methods relating to establishment and maintenance of personnel standards on a merit basis, except that the Board shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Board to be necessary for the proper and efficient operation of the plan.”

Title 42, Section 503(a), provides as follows:

“(a) The Board shall make no certification of payment to any state unless it finds that the law of such state, approved by the Board under the Federal Unemployment Tax Act, includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Board shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Board to be reasonably calculated to insure full payment of unemployed compensation when due;”
By “Board,” referred to above, is meant the Social Security Board.

The first provision above quoted applies to a merit system of personnel administration for the State Department of Public Welfare and the second to a merit system for personnel administration for the Texas Unemployment Compensation Commission.

These provisions of the Federal law were enacted August 10, 1939, which was after the date of adjournment of the Forty-sixth Legislature, and, as you know, no session of the Legislature was held since the Forty-sixth Legislature adjourned until this present session; therefore, the Legislature of Texas did not have an opportunity to comply with the requirements of the Federal law until this bill was introduced during this session of the Legislature.

On December 4, 1940, the State Department of Public Welfare and the Texas Unemployment Compensation Commission were advised by Mr. Oscar M. Powell, Director of the Social Security Board, Washington, D. C., that it was absolutely necessary that a Merit Council be appointed and that the merit system of personnel administration be put into effect in Texas immediately or no further funds would be granted to the State of Texas for the payment of old age pensions or for the operation of the Texas Unemployment Compensation Commission. It was further stated by Mr. Powell that the Social Security Board would not stand the expense of two merit councils but that one should suffice and that until the Legislature met and authorized the creation of a joint Merit Council that the Social Security Board would pay the expenses of a Merit Council for the Texas Unemployment Compensation Commission if the State Department of Public Welfare would agree to use the registers of eligible persons for employment under the merit system of the Texas Unemployment Compensation Commission.

In order to meet the requirements of the Social Security Board, the Texas Unemployment Compensation Commission on December 9, 1940, appointed M. J. Norrell of Dallas, Texas, Raymond C. Gee of Fort Worth, Texas, and Dr. Monroe S. Carroll of Waco, Texas, as members of the Texas Unemployment Compensation Commission Merit Council. The above named gentlemen were recommended by the Presidents of the University of Texas, Texas Agricultural and Mechanical College, and Texas Technological College; and on the same day the State Department of Public Welfare made and passed a resolution requesting the Texas Unemployment Compensation Commission’s Merit Council to perform all of the duties that a merit council of their own would perform if they had one and further agreeing to use the registers established by the Texas Unemployment Compensation Commission’s Merit Council in employing employees in the future. The Social Security Board in Washington withheld a payment of funds for old age pensions for some three weeks while all of the details of this agreement were worked out and certified copies of the resolutions were being prepared and forwarded to Washington; and upon receipt of proof satisfactory to the Social Security Board that a Merit Council had been established and was functioning, funds were then forwarded to the Texas State Department of Public Welfare for the payment of pensions; and since that time, on the basis of this agreement and assurance from the Texas Unemployment Compensation Commission and the State Department of Public Welfare that a bill would be introduced in the Legislature creating a permanent Merit Council for the two departments receiving said funds, the Social Security Board has continued to grant funds to these two departments.

I am convinced that unless a bill creating a merit system of personnel administration for these two departments is passed by this Legislature the Social Security Board will not grant further funds to Texas for the payment of old age pensions, which would necessitate the calling of a special session at an expense of some Two Hundred Thousand ($200,000.00) Dollars and the loss to the old people of Texas Federal funds pending the passage of such an act during the special session. This we cannot let happen, and because of the possibility that it may happen, I have decided to request that you give H. B. No. 454 your immediate attention as an emergency matter.

H. B. No. 454 has been submitted to the Social Security Board in Washington and meets with their approval. I realize that there is some objection to a merit system of personnel
administration by some members of this Legislature for the State at large; however, since the Congress of the United States has made it a condition precedent to the granting of funds to this State for the payment of old age pensions and the operation of the Texas Unemployment Compensation Commission that a merit system of personnel administration be established, we must comply with the mandate of Congress.

This is a serious matter and I urge your serious consideration of this bill.

This bill does not affect any other departments and the cost of the operation of this Merit Council will be borne almost entirely by the Federal government, and I am informed that the State will have to appropriate fifty cents out of each Three ($3.00) Dollars for the operation of the Council. This figure is arrived at in the following manner. The entire cost of operation of the Merit Council for the Texas Unemployment Compensation Commission will be borne by the Federal government; the State Department of Public Welfare will be charged its pro rata share on the basis of the number of employees of the State Department of Public Welfare bears to the number of employees covered by the Act, one-half of which cost will be borne by the Federal government. The Texas Unemployment Compensation Commission has twelve hundred (1200) employees and the State Department of Public Welfare has approximately six hundred (600); therefore, the amount to be paid by the State Department of Public Welfare is one-half the amount paid by the Texas Unemployment Compensation Commission and the State contributes one-half of the sum paid by the State Department of Public Welfare, which makes the State's share one-sixth of the total cost or fifty (50c) cents out of each Three ($3.00) Dollars. It is estimated that a nominal appropriation of Six Thousand Five Hundred ($6,500.00) Dollars will be required to pay the State Department of Public Welfare's pro rata share.

Respectfully submitted,

W. LEE O'DANIEL,
Governor of Texas.

To the Senate of the Forty-seventh Legislature:

I ask the advice, consent and confirmation of the Senate to the following appointment:

To be a Member of the Liquor Control Board, term expiring November 15, 1945:

Thos. B. Love of Dallas, Dallas County.

Respectfully submitted,

W. LEE O'DANIEL,
Governor of Texas.

The message submitting the nomination of Thos. B. Love was referred to the Committee on Nominations of the Governor.

Signing of Bills

The President signed in the presence of the Senate, after their captions had been read, the following enrolled bills:

S. B. No. 280, A bill to be entitled "An Act authorizing any school district having an indebtedness in excess of six (6%) per cent of its assessed valuation in which is located a school building which shall have been condemned by certain authorities, to levy a tax of not to exceed seventy-five (75c) cents on the One Hundred ($100.00) Dollars valuation for the purchase, construction, repair or equipment of school buildings and the payment of principal and interest on bonds issued for such purpose; providing that the aggregate amount of such bonds at the time of issuance shall never reach an amount such that a tax of seventy-five (75c) cents on the One Hundred ($100.00) Dollars valuation will not pay interest and principal as they accrue and mature; providing that the amount of maintenance tax and the amount of bond tax together shall never exceed One and 25/100 ($1.25) Dollars on the One Hundred ($100.00) Dollars valuation; providing that the bond tax shall operate to reduce the maintenance tax to the difference between the rate of bond tax and One and 25/100 ($1.25) Dollars; providing that such tax shall not be levied and such bonds shall not be issued until authorized by an election; enacting other provisions relating to the subject hereof; and declaring an emergency."
H. B. No. 593, A bill to be entitled "An Act providing for the appointment by the District Judge of the Sixteenth Judicial District of Texas, composed of the Counties of Cooke and Denton, or the Judge of the Judicial District of which the Counties of Cooke and Denton are a part thereof, of an official shorthand reporter for such district; providing his qualifications; providing that the salary of said official shorthand reporter shall be fixed and determined by the judge of said district and not otherwise; providing for the manner of payment of said salary and out of what fund; providing for transcript fees and allowance for expenses as provided in Chapter 56, H. B. No. 276, Acts, Regular Session of the Forty-first Legislature, 1929, which allowances, as now provided by law being fixed and established as a part of this Act; and declaring an emergency."

H. B. No. 567, A bill to be entitled "An Act making emergency supplementary appropriations for the support and maintenance of the Texas Liquor Control Board for the fiscal year ending August 31, 1941; for the payment of refund claims filed under the provisions of the Texas Liquor Control Act; providing regulations and restrictions in respect to the appropriations made herein; and declaring an emergency."

Committee Substitute House Bill 8 on Passage to Third Reading

The Senate resumed consideration of the pending special order, same being C. S. H. B. No. 8, known as the omnibus tax bill, on its passage to third reading; with motion pending by Senator Mauritz to reconsider the vote by which the amendment (53) by Senator Shivers to Article XIV of the bill was adopted.

Question—Shall the motion to reconsider prevail?

Senator Mauritz asked unanimous consent to offer to the bill at this time and amendment containing the same provisions (with certain additions) as the amendment (53) previously offered by him and tabled by the Senate.

The President announced there was objection to the request of Senator Mauritz.

Question recurred—Shall the motion of Senator Mauritz to reconsider the vote by which the Senate adopted the amendment (53) by Senator Shivers to Article XIV of the bill prevail?

Pending consideration of the motion, Senator Sulak occupied the Chair temporarily.

(President in the Chair.)

Senator Moffett moved to table the motion to reconsider.

Yea and naes were demanded, and the motion to table was lost by the following vote:

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Senator Weirert (present), who would vote "yea" with Senator Spears (absent), who would vote "nay."

Question recurring on the motion to reconsider, yeas and nays were demanded.

The motion to reconsider prevailed by the following vote:

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Paired

Senator Weinert (present), who would vote "nay" with Senator Spears (absent), who would vote "yea."

Question—Shall the amendment (53) by Senator Shivers to Article XIV of the bill be adopted?

Yeas and nays were demanded, and the amendment was lost by the following vote:

Yeas—12
Beck
Brownlee
Formby
Lovelady
Martin
Moffett

Nays—17
Aikin
Chadick
Cotten
Fain
Graves
Hazlewood
Hill
Isbell
Kelley

Paired

Senator Weinert (present), who would vote "nay" with Senator Spears (absent), who would vote "yea."

Senator Aikin offered the following amendment to the bill:

(108)

Amend committee substitute for H. B. No. 8 by striking out all of Article XIV.

Senator Van Zandt offered the following substitute for the amendment:

(109)

Amend the mimeographed copy of H. B. No. 8 by striking out Article XIV and substitute in lieu thereof the following:

Article XIV

"Section 1. That from and after the passage of this Act it shall be unlawful for any person to operate, maintain, open or establish any store, as that term is defined herein, in this State without first having obtained a license so to do from the Comptroller of Public Accounts as hereinafter provided.

Sec. 2. Any person desiring to operate, maintain, open or establish a store in this State shall apply to the Comptroller for a license so to do. The application for a license shall be made on a form which shall be prescribed and furnished by the Comptroller and shall set forth the name of the owner, manager, trustee, lessee, receiver, or other person desiring such license, the name of such store, the location, including the street number of such store, and such other facts and information as the Comptroller may require. If the applicant desires to operate, maintain, open or establish more than one such store, such applicant shall make application for a license to operate, maintain, open or establish each such store, but the respective stores for which the applicant desires to secure licenses may all be listed on one application blank.

It is hereby made the further duty of the Comptroller to collect, supervise, and enforce the collection of all license and other fees or taxes that may be due under the provisions of this Article and to that end the said Comptroller is hereby vested with all of the power and authority conferred by this Article. The Comptroller is further authorized and empowered to promulgate rules and regulations to provide for the collection of the amount of license and other fees or taxes due under the provisions of this Article and on the effective date of this Act.

Each application shall be accompanied by a filing fee of fifty (50) cents for each store operated or to be operated for the purpose of defraying the cost of administration of this Article.

Each application shall be signed and sworn to by the applicant as being true and correct, before an officer authorized to administer oaths, and may contain such other information as the applicant may wish to include, or as the Comptroller may require.

Sec. 3. As soon as practicable, after the receipt of any such application, the Comptroller shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If upon such examination, the Comptroller shall find that any such application is not in proper form and does not contain the necessary and requisite information, he shall return such application
for correction. If an application is found to be satisfactory, and if the filing and license fee as herein prescribed shall have been paid, the Comptroller shall issue to the applicant a license for each store for which an application for a license shall have been made. Each licensee shall display the license so issued in a conspicuous place in the store for which such license is issued.

Sec. 4. All licenses shall be so issued as to expire on the thirty-first day of December of each year. On or before the thirty-first day of December of each year, every person having a license shall apply to the Comptroller for a renewal license for the calendar year next ensuing. All applications for renewal licenses shall be made on forms which shall be prescribed and furnished by the Comptroller. Each such application for a renewal license shall be accompanied by a filing fee of fifty (50) cents for each store operated or to be operated.

Sec. 5. The following words, terms and phrases as used in this Article are hereby defined as follows:

(a) ‘Person’ shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation, trustee, agency, and receiver and every other legal entity, natural or artificial.

(b) ‘Comptroller’ shall mean the Comptroller of Public Accounts of the State of Texas, or his duly authorized agents and representatives.

(c) The term ‘tax year’ shall mean either the calendar year or the taxpayer’s fiscal year when permission is obtained from the Comptroller to use the same as the tax period in lieu of the calendar year.

(d) The term ‘cash gross receipts’ means the total amount of money received in the regular course of business for tangible personal property sold by any person engaged in the retail business or the wholesale business.

(e) The term ‘sale’ means the sale or transfer of tangible personal property for a valuable consideration, when such transfer is made by one in the ordinary course of his business and the sale is made for consumption or use, or for any other purpose including the resale thereof, and for the use or consumption in processing or manufacturing or by industrial enterprises or industries. The term ‘sale’ or ‘sales’ shall not include the isolated or occasional sale of tangible personal property by a person not engaging in the sale of tangible personal property as a business.

(f) The term ‘store’ as used in this Article shall be construed to mean and include any store or stores or establishments not specifically exempt by the provisions of this Article which are owned, operated, maintained or controlled by the same person or persons, in which stores goods, wares or merchandise are sold at retail or wholesale. Provided, however, that the term ‘store’ shall not include (1) wholesale and/or retail lumber and building material businesses engaged exclusively in the sale of lumber and building material; (2) any place of business principally engaged in the storing, selling, or distributing petroleum products thereat, provided seventy-five (75%) per cent in volume of the sales thereat are petroleum products; (3) any person engaged in the exclusive sale, at retail, of dairy products.

Sec. 6. No tax shall be levied upon the cash gross receipts derived from the following sales:

Goods, wares, and merchandise sold to the government of the United States and its agencies; goods, wares and merchandise sold to the State of Texas and its agencies and to the various counties, districts, and municipalities of this State and their agencies; sales in interstate and foreign commerce, only to the extent that the same are free from State taxation under the Constitution of the United States of America.

Sale of seeds for planting. Sales made in the original state or conditions of livestock, poultry, and all products of the farm and ranch shall be exempt from the provisions of this Article until the same are processed or sold at retail, by a person other than the raiser or producer thereof.

All sales of any commodity on which the seller now pays an occupation tax measured by gross receipts equivalent to one-tenth of one per cent shall be exempt from the provisions of this Article. All persons now paying an intangible tax under the laws of Texas shall be exempt from the provisions of this Article.
The sale in bulk of a business by the owner thereof to another who succeeds such owner in the operation of such business is excluded from taxed sales under this Article, provided such purchaser actually continues the operation of such business and does not buy the same or the tangible personal property thereof or any part thereof for a purpose other than resale thereof.

Sec. 7. Beginning September 1, 1941, all persons engaged in the retail business in this State shall pay a tax equal to one-tenth of one percent of the total cash gross receipts of such business, and all persons engaged in the wholesale business shall pay a tax equivalent to one-tenth of one percent of the total cash gross receipts of such business.

Sec. 8. The taxes levied hereunder shall be due and payable in monthly installments on or before the fifteenth day of the month next succeeding the month in which the tax accrues. The taxpayer shall, on or before the fifteenth of each month, make out a return showing the amount of tax for which he is liable for the preceding month and shall mail such return, together with a remittance for the amount thereof, that are now due or may hereafter become due, shall not be hereafter preserved, including the enforcement of the collection thereof by civil suit, which remedy is hereby specifically authorized and fully provided for; and the liability of any person, agent, receiver, trustee, firm, corporation, association or copartnership for the payment of license fees, including any interest and penalty due thereon, that are now due or may hereafter become due, shall not be
changed, altered or modified, except as stated in this Article.

Sec. 11. The Comptroller shall prescribe forms for the making of the monthly, quarterly, and annual returns and remittances required by this Article. Such returns shall be verified by the oath of the taxpayers, if made by an individual, or by the oath of the president, vice-president, secretary or treasurer, or duly authorized agent, if made on behalf of a corporation. If made on behalf of a partnership, trust estate, or any group or combination acting as a unit, or by any other entity, the same shall be made by an individual delegated by such taxpayer. If for any reason it is not practicable for any individual taxpayer to make the oath the same may be made by any duly authorized agent.

Sec. 12. As soon as practicable after the return required by this Article is filed, the Comptroller shall examine it. If it then appears that the correct amount of tax is greater or less than the amount shown in the return, the tax shall be recomputed. If the amount paid exceeds that which should have been paid, as computed, the excess so paid shall be immediately returned to the taxpayer in accordance with the provisions of this Article. If the amount paid is less than the amount which should have been paid, the difference, to the extent not covered by any credits under this Article, shall be paid upon notice and demand by the Comptroller. If any part of the deficit is due to the neglect or intentional disregard of authorized rules and regulations with knowledge thereof but without intent to defraud, there shall be added as damages ten (10) per cent of the total amount of the deficit, and the tax and interest in such cases shall be collected at the rate of ten (10) per cent per annum on the amount of such deficit from the time the same was due, which interest and damages shall become due and payable on demand by the Comptroller and an additional ten (10) per cent per annum on the tax shall be added from the date such tax was due and unpaid.

Sec. 13. It shall be the duty of every person engaging or continuing in this State in any business subject to the provisions of this Article to keep and preserve suitable records of the gross receipts from the sales of such business, and such other books of account and records as may be necessary to determine the amount of tax for which he is liable under the provisions of this Article. It shall be the duty of every person to keep and preserve such records for a period of two (2) years all invoices of goods and merchandise purchased for resale and all such books, invoices, and other records shall be open for examination at all times to the Comptroller or his duly authorized agents.

Sec. 14. Every person selling any goods, wares, or merchandise, sales of which are taxed by this Article shall keep and preserve complete records of such sales. It shall be the duty of every person to keep and preserve such records for a period of two (2) years and available for examination and inspection.

Sec. 15. If no return is made when due by any taxpayer required to make return as provided herein, the Comptroller shall give written notice by registered mail to such taxpayer to make such return within thirty (30) days from the date of such notice, and if such taxpayer shall fail or refuse to make such returns as he may be required to make in such notice, then such returns shall be made by the Comptroller from such information available, and such returns shall be prima facie correct for the purposes of this Article and the amount of tax shown due thereby shall be a lien against all of the property of the taxpayer subject to execution until discharged by payment.

Sec. 16. The tax imposed by this Article shall be a lien upon the property of any person subject to the provisions hereof, who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make out a return upon such form as may be prescribed by the Comptroller within ten (10) days after the date of the sale of his business or stock of goods, or the
date of his cessation of business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of taxes due and unpaid until such time as the former owner shall produce a receipt from the Comptroller showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after thirty (30) days he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business of the former owner.

Sec. 17. Any person improperly charged with any tax and required to pay the same may recover the amount paid, together with legal interest in a suit against the Comptroller in any Court of competent jurisdiction as now provided by law and permission is hereby granted any such taxpayer to file such suit.

Sec. 18. It shall be the duty of the Attorney General to represent the Comptroller and other officers of the State in the enforcement of this tax and in any litigation arising hereunder.

Sec. 19. Any tax due and payable under this Article is a debt to the State of Texas and may be collected in civil suit in any Court of competent jurisdiction as now provided by law.

Sec. 20. Whenever any person shall fail and refuse to make the return or pay the taxes as hereinafter required or any corporation subject to the provisions of this Article until a receipt of a notice from the Comptroller to the effect that all taxes levied under this Article have been paid by such corporation.

The assessment of taxes herein made, and the returns thereof herein required, shall be on a monthly, quarterly or annual basis as permitted by this Article.

Sec. 21. All remittances of taxes imposed by this Article shall be made to the Comptroller by bank draft, check, cashier's check, money order, or in cash. The Comptroller shall issue his receipt for all remittances when requested. However, no remittances other than cash shall be a final discharge of liability for the tax herein imposed unless and until it has actually been paid in cash to the Comptroller or State Treasurer.

Sec. 22. At the end of each month the State Auditor shall carefully check the books and records of the Comptroller relating to the taxes herein levied and collected, and shall verify the amounts paid or to be paid into the State Treasury.

Sec. 23. The Comptroller shall keep full and accurate record of all money received by him and how disbursed. He shall preserve for a period of three (3) years all returns filed with him.

Sec. 24. Neither the Comptroller nor any of his office assistants or agents shall divulge the gross income or gross receipts of any person or the amount of tax paid by any person as shown by the returns filed under this Article, except in some judicial proceeding to which the State is a party. The Comptroller, however, may impart such information as may be necessary to the Governor or to the Attorney General or to any other officer of the State charged with the enforcement of the provisions of this Article, and then only in the event that an investigation is being made concerning the payment of the taxes imposed herein.

Sec. 25. The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal of any corporation subject to the provisions of this Article until a receipt of a notice from the Comptroller to the effect that all taxes levied under this Article have been paid by such corporation.

Sec. 26. It shall be unlawful for any person to refuse to make any return provided for in this Article, or to make any false or fraudulent return or false statement in any return with the intent to defraud the State, or to avoid the payment of the tax or any part thereof; and it shall be unlawful for any person to aid or abet another in any attempt to evade the payment of any tax.

Sec. 27. Any person violating any of the provisions of this Article, with the intent to defraud the State of Texas of the collection of the tax, or any part thereof imposed hereby,
shall be guilty of a felony and upon conviction shall be punished by confinement in the penitentiary not less than one nor more than three years.

Sec. 28. It shall be the duty of the Comptroller to enforce and administer all of the provisions of this Article relating to tax returns and the ascertainment, assessment and collection of the taxes imposed hereunder, and it shall be the duty of the Attorney General and of every County and District Attorney in this State to assist the Comptroller in the enforcement of this Article when called upon so to do.

Sec. 29. The Comptroller shall, from time to time, promulgate such rules and regulations not inconsistent with this Article for the making of returns and for the ascertainment, assessment, and collection of the tax imposed hereunder as he may deem necessary, and when such rules and regulations are promulgated the Comptroller shall furnish every taxpayer under this Article with a copy of such rules and regulations. The Comptroller shall likewise cause forms to be printed for the making of returns and remittances and shall furnish the same to taxpayers upon request.

Sec. 30. The Comptroller may examine any books, papers, records or any other data belonging to or in the possession of any taxpayers relating to any return made by such taxpayer, or for the purpose of making a return where none has been made. Such request shall be made as provided by Article 1366 to 1371 inclusive, Revised Civil Statutes of 1925.

Sec. 31. There is hereby created a special fund known as the 'Gross Receipts Tax Enforcement Fund.' All moneys collected, as filing fees provided for in Section 2 of this Article or so much thereof as may be necessary, shall be applied by the Comptroller to such Enforcement Fund and shall be used to carry out the enforcement of this Article, and such other lawful duties as may be imposed by law upon the Comptroller.'

Senator Aikin raised a point of order against consideration of the substitute at this time, on the ground that it includes subject matter not included in Article XIV of the bill, which is the only portion of the bill affected by the pending amendment.

The President sustained the point of order.

Question—Shall the amendment by Senator Aikin be adopted?

Message from the House

The Reading Clerk of the House was recognized by the President to present the following message:

Hall of the House of Representatives, Austin, Texas, April 28, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has adopted the Conference Committee Report on H. B. No. 76 by a vote of 113 ayes, 29 noes.

Respectfully submitted,

E. R. LINDELEY,
Chief Clerk, House of Representatives.

Recess

Senator Martin moved that the Senate recess to 2:00 o'clock p. m. today.

Yeas and nays were demanded, and the motion prevailed by the following vote:

Yeas—16
Beck
Brownlee
Chadick
Fain
Formby
Hazlewood
Ishbell
Lanning

Nays—14
Aikin
Cotten
Graves
Hill
Kelley
Mauritz
Metcalfe

Abst—in Excused
Spears

The Senate, accordingly, at 12:20 o'clock p. m., took recess to 2:00 o'clock p. m. today.
The Senate met at 2:00 o'clock p. m. and was called to order by the President.

Communication from Hon. Tom Connally

The President laid before the Senate and had read the following communication from Hon. Tom Connally, United States Senator from Texas:

UNITED STATES SENATE
Committee on Privileges and Elections

April 24, 1941.

The Texas Senate, Austin, Texas.

Attention: Hon. Coke R. Stevenson, President; Hon. Bob Barker, Secretary; Hon. Homer Leonard, Speaker.

My dear Friends:

I thank you for sending me the resolution adopted by your body with reference to strikes, and I am sorry the great pressure of official duties has prevented my answering sooner.

There is attached hereto copy of press release relating to strikes which I thought you might like to see. As a temporary measure, as you no doubt know, I propose the government taking over plants involved in strikes in order that production may continue uninterrupted and the arms and munitions may be produced without delay.

There are a number of proposed solutions now pending relating to the strike situation and I expect to vote for the most favorable and most practical one. I am on a committee making an investigation of the production problem including labor disturbances, and you may be assured of my most earnest and conscientious efforts.

I always appreciate the views of my constituents, and am especially grateful for the views of the Texas Senate.

With cordial good wishes to my many friends in the Senate, I am

Sincerely,

TOM CONNALLY.

TC/3s
defense project purely in the national interest."

On motion of Senator Hill, and by unanimous consent, the communication and press release referred to in it were ordered printed in the Journal.

**Senate Resolution 115**

Senator Van Zandt, by unanimous consent, submitted at this time the following resolution:

Whereas, T. L. Taylor, Fred Fink, Miss Alda Bell Francis and Miss Betty K. Russell, of Grayson County, Texas, are now in the halls of the Senate; and

Whereas, These young men and women have been selected by the Senate and House Sub-Committee as winners in presenting the best oration on the subject of improving agriculture in a recent contest; and

Whereas, Be it resolved by the Senate of Texas, That these future farmers and 4-H Club members be granted the privilege of the floor for the afternoon and be congratulated for their services to the nation in preserving democracy.

The resolution was read, and by unanimous consent, it was considered and adopted at this time.

**Message from the House**

The Assistant Reading Clerk of the House was recognized by the President to present the following message:

Hall of the House of Representatives, Austin, Texas, April 28, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolutions:

H. S. R. No. 233, Requesting the Senate to return to the House H. B. No. 361 for further consideration.

H. C. R. No. 101, Granting permission to plaintiffs in causes Nos. 37 and 77 pending in the 112th District Court of Pecos County to sue the State of Texas.

H. C. R. No. 102, Requesting the Congress of the United States to speed the passage of S. B. No. 1313.

H. C. R. No. 103, Inviting women leaders of organizations to address a joint session on May 7, 1941, at 11:00 a.m.

Respectfully submitted,

E. R. LINDLEY,
Chief Clerk, House of Representatives.
Yeas and nays were demanded, and the motion of Senator Shivers prevailed by the following vote:

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Senator Vick moved to reconsider the vote by which the amendment by Senator Aikin, striking Article XIV from the bill, was adopted.

Senator Metcalfe moved to table the motion to reconsider.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

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Senator Vick then withdrew the motion to reconsider.

Senator Fain offered the following amendment to the bill:

| Amend Senate committee substitute for H. B. No. 8 by striking out all of sub-section 1, of Section 1, as amended, of Article II and insert in lieu thereof the following:

**Section 1.** (1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

“A tax shall be paid by each produced on the amount of gas produced within this State and on the amount of gas produced in another state and imported into this State upon the first sale thereof in intra-state commerce, equivalent to five (5%) per cent of the market value of all gas including casing head gas produced and saved within this State and of all gas sold if produced in another state and imported into this State, at the market value thereof, as and when produced, or as and when imported.

“The market value of gas produced in another state and imported into this State shall be the average value at the mouth of the well of gas sold within this State as revealed by reports made to the Comptroller for the quarter immediately preceding the quarter in which such gas was imported and sold. Provided, however, that the amount of the tax on sweet and sour gas shall never be less than one-fifteenth (1/15) of one cent per thousand cubic feet on sweet and sour gas sold or produced and saved in this State, and not thereafter lawfully injected into the earth in the State of Texas for the following purposes: (a) storage thereof; (b) recycling; (c) repressuring; (d) lifting oil and not thereafter; (e) lawfully vented or flared in connection with the production of oil.

“The market value of gas produced in this State shall be the value thereof plus any bonus, or premium, or anything of value paid therefor, or any sum of money that such as will reasonably bring if produced and sold in accordance with the laws, rules and regulations of this State, provided that notwithstanding any other provision herein to the contrary, where gas is processed for its liquid hydrocarbon content and the residue gas is returned by recycling methods to the same gas producing formation underlying the land from which the gas is produced, the value of such gas shall be three-fifths (3/5) of the value of the products extracted, separated and saved from such gas.

“In case gas is sold for cash the tax shall be computed on the producers’ gross receipts of such sale,
and in case the whole or a part of the consideration for the sale of gas is a portion of the products extracted from such gas, the tax shall be computed on the gross value of the products received plus all other things of value received by the producer, except in case of gas processed by recycling operations.

"In determining the market value of gas for the purpose of computing the tax due, there shall be excluded the value of residue gas lawfully injected into the earth in the State of Texas for the following purposes:

(a) storage thereof; (b) repres­suring; (c) lifting oil; and also (d) gas lawfully vented or flared in connection with the production of oil; save and except however, if any gas so injected into the earth is sold for such purposes, then the market value of the gas so sold shall not be excluded in computing the tax."

FAIN, HAZLEWOOD.

Senator Metcalfe offered the following amendment to the amendment:

(111)

Amend amendment by Fain and Hazlewood to Article II of committee substitute for H. B. No. 8, by striking out the words "five (5%) per cent" and insert in lieu thereof the words "five and one-half (5½%) per cent."

Senator Fain moved to table the amendment to the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—18
Brownlee  Ramsey
Cotten  Shivers
Fain  Smith
Graves  Stone
Hazlewood  Van Zandt
Isbell  Vick
Kelley  Weinert
Martin  Winfield
Moore  York

Nays—12
Aikin  Lovelady
Chadick  Mauritz
Formby  Metcalfe
Hill  Moffett
Lanning  Spears
Lemens  Sulak

Absent—Beck

Senator Moore offered the following amendment to the amendment:

(112)

Amend Fain amendment by adding at end thereof:

"All liquid hydrocarbons that are recovered from gas by means of a separator or by other non mechanical methods shall be taxed at the same rate as oil." And by striking out the remaining portions of Article IV.

The amendment to the amendment was adopted.

The amendment as amended was adopted.

Record of Votes

Senators Metcalfe, Aikin and Hill asked to be recorded as voting "nay" on the amendment by Senator Fain.

Senator Smith called from the table for consideration at this time the following amendment to the bill (which amendment was offered by Senator Smith on April 24, 1941, and tabled subject to call on that day):

(42)

Amend committee substitute for H. B. No. 8, as follows:

By striking Article III on page 15 and renumbering the remaining Articles to conform to its omission.

The amendment was adopted by the following vote:

Yeas—20
Brownlee  Moffett
Cotten  Moore
Fain  Ramsey
Graves  Shivers
Hazlewood  Smith
Isbell  Stone
Kelley  Van Zandt
Lanning  Vick
Martin  Weinert
Mauritz  York

Nays—10
Aikin  Lovelady
Chadick  Metcalfe
Formby  Spears
Hill  Sulak
Lemens  Winfield

Absent—Beck
Senator Shivers moved to reconsider the vote by which the amendment (72) by Senator Van Zandt relating to the tax on insurance companies was adopted.

Senator Brownlee moved the previous question on the bill and pending motion, and the motion was duly seconded.

Question—Shall the main question be now ordered?

Yeas and nays were demanded, and the main question was ordered by the following vote:

Yeas—18

Brownlee  Moore
Cotten    Shivers
Fain      Smith
Formby    Spears
Graves    Stone
Kelley    Vick
Lanning   Weinert
Martin    Winfield
Moffett   York

Nays—11

Aikin     Lovelady
Chadick   Mauritz
Hazlewood Metcalfe
Hill      Sulak
Isbell    Van Zandt
Lemens

Absent

Beck      Ramsey

Question first recurring on the motion to reconsider, yeas and nays were demanded.

The motion was lost by the following vote:

Yeas—14

Chadick  Martin
Cotten    Moffett
Graves    Moore
Hazlewood Shivers
Kelley    Stone
Lanning   Vick
Lemens    York

Nays—16

Aikin     Mauritz
Beck      Metcalfe
Brownlee  Moffett
Chadick   Moore
Cotten    Ramsey
Fain      Shivers
Formby    Smith
Graves    Spears
Hazlewood Stone
Hill      Sulak
Isbell    Van Zandt
Kelley    Vick
Lanning   Weinert
Lemens    Winfield
Lovelady  York
Martin

Absent

Ramsey

On motion of Senator Moore and by unanimous consent, it was ordered that the caption be amended to conform to the body of the bill as amended.

On motion of Senator Van Zandt, and by unanimous consent, the amendment relating to a tax on insurance companies, previously adopted, was ordered inserted in the bill as Article XIV.

The bill then was passed to third reading by the following vote:

Yeas—31

Aikin     Mauritz
Beck      Metcalfe
Brownlee  Moffett
Chadick   Moore
Cotten    Ramsey
Fain      Shivers
Formby    Smith
Graves    Spears
Hazlewood Stone
Hill      Sulak
Isbell    Van Zandt
Kelley    Vick
Lanning   Weinert
Lemens    Winfield
Lovelady  York
Martin

Committee Substitute House Bill 8 on Third Reading

Senator Cotten moved that the constitutional rule requiring bills to be read on three several days be suspended and that C. S. H. B. No. 8 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—31

Aikin     Mauritz
Beck      Metcalfe
Brownlee  Moffett
Chadick   Moore
Cotten    Ramsey
Fain      Shivers
Formby    Smith
Graves    Spears
Hazlewood Stone
Hill      Sulak
Isbell    Van Zandt
Kelley    Vick
Lanning   Weinert
Lemens    Winfield
Lovelady  York
Martin

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time.
Senator Shivers offered the following amendment to the bill:

(113)
Amend substitute for H. B. No. 8, page 169, subsection 4, by striking out the figures "$1,350,000" wherever they occur, and substitute in lieu thereof the following: "$1,750,000."

SHIVERS, LOVELADY, METCALFE, KELLEY, BECK, VICK, HAZLEWOOD, FORMBY, GRAVES, SULAK.

Senator Van Zandt offered the following substitute for the amendment:

(114)
Amend mimeographed copy of H. B. No. 8, Article XXI, sub-section (4) of Section 2, by striking out the words and figures "One Million Three Hundred and Fifty Thousand ($1,350,000) Dollars" in each place it appears in said sub-section, and insert in lieu thereof the words and figures "One Million Six Hundred Thousand ($1,600,000) Dollars."

Senator Kelley moved the previous question on the pending amendments and the passage of the bill, and the motion was duly seconded.

The Senate refused to order the main question at this time by the following vote:

Yea—14
Brownlee Cotten Formby Kelley Lovelady Martin Moffett Shivers

Nay—17
Aikin Beck Chadick Fain Graves Hazlewood Hill Isbell Lanning

Senator Lovelady moved to table the substitute.

Yea and nay were demanded, and the motion to table prevailed by the following vote:

Yea—22
Aikin Beck Chadick Formby Graves Hazlewood Hill Isbell Kelley Lanning Lemens Shivers Smith Weinert York

Nay—9
Brownlee Cotten Chadick Fain Mauritz Metcalfe Moffett Moore Ramsey Shivers Smith Van Zandt York

Senator Ramsey offered the following amendment to the amendment:

(115)
Amend Shivers' amendment by striking out the figures "$1,350,000" wherever they appear and substituting in lieu thereof the figures "$2,000,000."

RAMSEY, BECK.

On motion of Senator Shivers, the amendment to the amendment was tabled.

Record of Vote

Senator Hill asked to be recorded as voting "nay" on the motion to table.

Question recurring on the amendment of Senator Shivers, yeas and nays were demanded.

The amendment was adopted by the following vote:

Yea—29

Senator Lovelady moved to table the substitute.
Vick York
Winfield
Nays—2
Moore Weinert

Senator Mauritz offered the following amendment to the bill:

(116)
Amend substitute for H. B. No. 8, page 126, by striking out the words and figures "One ($1.00) Dollar" and inserting in lieu thereof the words and figures "fifty (50c) cents."

MAURITZ, MOFFETT.

Senator Martin moved the previous question on the amendment and the passage of the bill, and the motion was duly seconded.

The main question was ordered by the following vote:

Yeas—21
Beck Moffett
Brownlee Ramsey
Cotten Shivers
Fain Smith
Formby Spears
Graves Stone
Hazlewood Van Zandt
Hill Weinert
Kelley Winfield
Lemens York
Martin

Nays—10
Aikin Mauritz
Chadick Metcalfe
Isebell Moore
Lanning Sulak
Lovelady Vick

Question then recurring on the amendment by Senator Mauritz, yeas and nays were demanded.

The amendment was adopted by the following vote:

Yeas—26
Aikin Martin
Beck Mauritz
Brownlee Metcalfe
Chadick Moffett
Cotten Ramsey
Formby Smith
Graves Stone
Hazlewood Sulak
Hill Van Zandt
Kelley Vick
Lanning Weinert
Lemens Winfield
Lovelady York

Moore Weinert

Senator Mauritz, by unanimous consent, offered at this time the following amendment to the bill:

(117)
Amend Sub-section (a) of Section 14 of Article XIX of H. B. No. 8 (and the caption of such bill to conform therewith) so that said Sub-section (a) of Section 14 will hereafter read as follows:

"From and after the effective date of this Article, there shall be and is hereby levied and imposed an excise tax of four (4) cents per gallon, or fractional part thereof, on all users of liquefied gases, and eight (8) cents per gallon, or fractional part thereof, on all users of other liquid fuels, upon the use of such liquefied gases and other liquid fuels by any person within this State only when such liquefied gases and other liquid fuels are used in an internal combustion engine for the generation of power to propel motor vehicles upon the public highways of this State. The said tax shall be computed and paid to the State of Texas through the Comptroller at the time and in the manner hereinafter provided.

The term 'use' wherever used in this Section shall mean and include the consumption of 'liquefied gases' and 'other liquid fuels,' as those terms are defined in Section 1 of this Article, by any person in a motor vehicle for the propulsion thereof upon the public highways of this State.

Each 'user' shall be prima facie presumed to have used or consumed for taxable purposes all liquefied gases and other liquid fuels shown by a duly verified audit of the Comptroller to have been purchased or received by him, and not accounted for.

From and after the effective date of this Article, any person using, or who may thereafter desire to use liquefied gases or other liquid fuels defined herein, for the purpose of the propulsion of motor vehicles upon the public highways of this State, shall file with the Comptroller of Public Accounts, an application for a permit to use said products, as herein provided, in such form as the
Comptroller may prescribe, giving correct name and address of the person making application, the make, horse power, motor number, highway license number, and fuel tank capacity of each vehicle intended to be used, including all auxiliary tanks, and a new application shall be filed on or before December 31st of each year for a permit for the subsequent calendar year. The application shall carry an agreement to file information with the Comptroller of any additional equipment acquired, or any changes in equipment being used, during the period for which permit is issued, and such other information as the Comptroller may require. Said permit may be revoked for violation of any provision hereof."

Amend Sub-section (a) of Section 14 of Article XIX of H. B. No. 8 (and the caption of such bill to conform therewith) so that said Sub-section (a) of Section 14 will hereafter read as follows:

"From and after the effective date of this Article, any person using, or who may thereafter desire to use liquefied gases or other liquid fuels defined herein for the purpose of the propulsion of motor vehicles upon the public highways of this State, shall file with the Comptroller of Public Accounts, an application for a permit to use said products, as herein provided, in such form as the Comptroller may prescribe, giving correct name and address of the person making application, the make, horse power, motor number, highway license number, and fuel tank capacity of each vehicle intended to be used, including all auxiliary tanks, and a new application shall be filed on or before December 31st of each year for a permit for the subsequent calendar year. The application shall carry an agreement to file information with the Comptroller of any additional equipment acquired, or any changes in equipment being used, during the period for which permit is issued, and such other information as the Comptroller may require. Said permit may be revoked for violation of any provision hereof."

The amendment was adopted unanimously.

Senator MoorT, by unanimous consent, offered the following amendment to the bill at this time:

(118)

Amend H. B. No. 8, Article VIII, Section 1 by striking out the word "Act" in paragraph 1 and substituting the word "Article."

The amendment was adopted unanimously.

On motion of Senator Moore and by unanimous consent, the caption was ordered amended to conform to the body of the bill as amended.

The bill then was passed by the following vote:

Yeas—31

Aikin       Kelley
Beck        Lanning
Brownlee    Lemens
Chadick     Lovelady
Cotten      Martin
Pain        Mauritz
Formby      Metcalfe
Graves      Moffett
Hazlewood   Moore
Hill        Ramsey
Isbell      Shivers
Message from the House

The Assistant Reading Clerk of the House was recognized by the President to present the following message:

Hall of the House of Representatives, Austin, Texas, April 28, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

H. B. No. 14, A bill to be entitled "An Act to amend Article 954, Code of Criminal Procedure, to authorize the Governor to remit fines, forfeitures of recognizances and bail bonds; and declaring an emergency."

H. B. No. 64, A bill to be entitled "An Act to validate the organization and creation of all school districts, including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, whether created by General or Special Law or by County Boards of Trustees; providing this Act shall not validate the organization or creation of any district, or consolidated or annexation of any district in or to such district where the same is now involved in litigation or where suit or litigation is filed with reference thereto within forty-five (45) days after the effective date of this Act; validating the acts of said County Boards of Trustees and Boards of Trustees of such districts; validating bond assumption elections and all bonds voted, authorized and/or now outstanding of said districts; validating all tax levies made in behalf of said districts; authorizing and empowering all school districts mentioned in this Act to levy, assess, and collect the same rate heretofore authorized or attempted to be authorized by any act or acts of said districts, or by any Act of the Legislature; making certain exemptions; and declaring an emergency."

H. B. No. 285, A bill to be entitled "An Act amending Section 9, Chapter 15, General Laws, Forty-first Legislature, Second Called Session, to provide that any person violating any of the provisions of this Act may be prosecuted therefor in any county of this State where such violation occurs; and declaring an emergency."

H. B. No. 305, A bill to be entitled "An Act amending Sections 3, 4 and 6, Chapter 21, General and Special Laws, Forty-third Legislature of Texas, Second Called Session, which amended Sections 4, 5 and 8, Chapter 241, General Laws of the Forty-third Legislature of Texas, Regular Session, providing for the reduction of promoter's license fees and bond in cities of less than 25,000 population; providing for the appointment of a referee for a single bout by a deputy boxing commissioner, and fixing the fee therefor; providing for similar appointment of seconds, timekeepers, and other local officials for no license fee; providing for a thirty day boxer's license and fixing the fee therefor; and declaring an emergency."

H. B. No. 332, A bill to be entitled "An Act to amend Articles 120, 121, 122, 123, 124, 125 and 126 of Chapter Seven, Title Four of the Revised Civil Statutes of Texas, 1925, said Article 120, as hereby amended, to include the contagious disease known as yellows; the contagious disease known as 'peach mosaic'; the contagious disease known as 'phony peach' and other contagious diseases and other injurious insect pests, and including and naming certain trees and/or plants susceptible to such contagious diseases and/or injurious insect pests; said Article 121, as hereby amended, to include all provisions for determination of nuisances; etc.; provides a saving clause and declares an emergency."

H. B. No. 355, A bill to be entitled "An Act regulating fishing and the taking of shrimp in or on the waters of Nueces Bay and Corpus Christi Bay; enacting prohibition and penalties in connection therewith; making the Act cumulative and repealing all conflicting laws; and declaring an emergency."
H. B. No. 370, A bill to be entitled "An Act authorizing the sale of all United States Treasury Bonds held for the account of the Permanent School Fund at September 1, 1940; and declaring an emergency."

H. B. No. 414, A bill to be entitled "An Act amending Section 1 of Chapter 58 of the General Laws of the Forty-second Legislature, Regular Session, as amended by Chapter 97 of the General Laws of the Forty-third Legislature, Regular Session; and declaring an emergency."

H. B. No. 420, A bill to be entitled "An Act to regulate the sale and labeling of agricultural and vegetable seeds, in the State of Texas and defining the manner of labeling of same by seed dealers who may expose and/or offer such seed for sale, providing for the testing of such seeds for germination and other purposes; defining person, agricultural seeds, vegetable seeds, hybrid seed corn, weed seeds, noxious-weed seeds and secondary noxious-weed seeds and advertisement, setting up labeling requirements for seeds, the sale of which is regulated by this Act and defining the physical testing methods of testing such seeds; etc.; providing for the repeal of certain laws, providing a safety clause; and declaring an emergency."

H. B. No. 422, A bill to be entitled "An Act amending Article 5473 of the Revised Civil Statutes of Texas, 1925, as amended by the Forty-first Legislature, Acts 1929, Chapter 223, page 477, to provide for a contractor's and laborer's lien upon the drilling rig, drill stem, casing and all drilling machinery under the circumstances otherwise set in Article 5473, as amended; and declaring an emergency."

H. B. No. 452, A bill to be entitled "An Act to permit the commissioners' court of any county to appropriate out of the general fund of the county funds for the care and maintenance of and/or services to any needy child or children in such county; providing that boarding homes licensed by the Division of Child Welfare, State Department Public Welfare, shall be used for children to be detained or cared for away from their parents or guardians; permitting the juvenile judge to make a general order relative to the detention of children prior to court hearing; defining the term 'juvenile court'; declaring an emergency."

H. B. No. 195, A bill to be entitled "An Act granting permission to E. B. Rodriguez to bring suit against the State of Texas, and/or Highway Department, in a court of competent jurisdiction, in Frio County, Texas, for damages for personal injuries received by him while on duty in the employ of the Highway Department of the State of Texas, and which injuries are alleged to have produced damages to the said E. B. Rodriguez; providing that any judgment so recovered to be paid out of the funds of the Highway Department of the State of Texas; providing that if any provisions of this Act shall be invalid, the validity of the other provisions thereof shall not be affected; and declaring an emergency."

H. B. No. 514, A bill to be entitled "An Act repealing Section 9 of Article IV of Chapter 495 of the Acts of the Third Called Session of the Forty-fourth Legislature, as amended by Senate Bill No. 24, Chapter 5, Acts of the Forty-sixth Legislature; and declaring an emergency."

H. B. No. 518, A bill to be entitled "An Act authorizing the commissioners' Courts in all counties having a population of not less than one hundred thousand (100,000) and not more than one hundred ninety-thousand (190,000) inhabitants, according to the last preceding Federal Census, to determine the maximum annual salary to be paid an officer named in Section 13 of Chapter 465 of the Acts of the Second Called Session of the Forty-fourth Legislature, where such officer's salary was based upon population under the laws existing on August 24, 1935, on the basis of the population of said county, according to the last preceding Federal Census; provided that the commissioners' courts in said counties are authorized to fix the maximum annual salary for the balance of the fiscal year 1944, after the effective date of this Act, on the basis of the Federal Census of 1940 and thereafter according to the last preceding Federal Census, and declaring an emergency."

H. B. No. 520, A bill to be entitled "An Act providing that in counties having not less than 37,500 nor more than 38,250 population according to
the last Federal Census, a candidate in a primary election of such county for State Representative in the Legislature shall not have his name placed on the ballot unless and until he has paid to the County Executive Committee a sum to be fixed not in excess of Fifty Dollars; repealing all laws or parts of laws in conflict herewith; and declaring an emergency."

H. B. No. 537, A bill to be entitled "An Act amending Article 779 of the Revised Statutes; providing for the investment of county and road district sinking funds; and declaring an emergency."

H. B. No. 538, A bill to be entitled "An Act making an appropriation to be paid out of the General Revenue Fund of the State of Texas the sum of Seventeen Thousand Two Hundred ($17,200.00) Dollars, not otherwise appropriated, to cover taxes due by the State of Texas to Fort Bend County, covering the years 1939 and 1940, inclusive, and the taxes to become due for the years 1941 and 1942; and declaring an emergency."

H. B. No. 544, A bill to be entitled "An Act authorizing employees of the Texas Forest Service and such additional outside help or assistance they might call on to enter on any privately owned lands for the purpose of investigating and controlling forest and grass fires that appear to be or are burning uncontrolled; and declaring an emergency."

H. B. No. 585, A bill to be entitled "An Act making it unlawful to hunt, take or kill any squirrel except during the months of October, November, and December in Cherokee County; providing for a penalty; repealing all conflicting laws; and declaring an emergency."

H. B. No. 613, A bill to be entitled "An Act to amend Article 2779 of the 1925 Revised Civil Statutes of Texas by adding Article 2779a, to provide for the election of tax assessors and collectors in independent school districts under certain circumstances; this Act to apply only to the independent school districts in those counties having a population of no less than nineteen thousand, two hundred and twenty (19,220) and no more than nineteen thousand, two hundred and forty (19,240) according to the last Federal Census; and declaring an emergency."

H. B. No. 624, A bill to be entitled "An Act amending Chapter 2 (H. B. No. 614) of the Act of June 2, 1939, page 346, General Laws of the Forty-sixth Legislature, to provide for uniform fees to be charged for the issuance of delayed birth and death certificates by the Probate Court, the clerk thereof and the State Registrar; and declaring an emergency."

H. B. No. 666, A bill to be entitled "An Act repealing Section 3 of Chapter 24, Acts of the First Called Session of the Forty-fifth Legislature; and declaring an emergency."

H. B. No. 678, A bill to be entitled "An Act requiring the Comptroller of Public Accounts to collect all State Occupation Taxes; repealing all laws in conflict therewith."

H. B. No. 682, A bill to be entitled "An Act providing that it shall be unlawful for any person to take, catch, ensnare or trap any fish by any means whatsoever in any waters of any public park under the control of the Texas State Parks Board, without the consent of the keeper, caretaker or superintendent of said park; providing a penalty, and authorizing any peace officer to arrest without warrant for a violation of any provision of this Act; and declaring an emergency."

H. B. No. 691, A bill to be entitled "An Act to amend an Act passed by the Thirty-fourth Legislature, convened at the City of Austin, on January 12, 1915, and adjourned March 29, 1915, creating McAllen Independent School District, same being H. B. No. 677, Chapter 82, of the General and Special Laws of said Legislature, so that Section 3 be amended so as to provide for the appointment as trustees, resident citizens and qualified voters in said district, each of whom shall be an owner of real property in said district; and declaring an emergency."

H. B. No. 711, A bill to be entitled "An Act providing for a more adequate and equitable salary and increasing the amount of office and travel expenditures for county superintendents of public instruction in all those counties of Texas coming within the brackets and population figures herein; specifically in all
those counties having not less than one hundred six thousand (106,000) and not more than one hundred seven thousand (107,000); and in all those counties having not less than ninety-two thousand (92,000) and not more than ninety-three thousand (93,000); and in all those counties having not less than eighty-three thousand (83,000) and not more than eighty-four thousand (84,000); and in all those counties having not less than twenty thousand, five hundred sixty (20,560) and not more than twenty thousand, five hundred seventy (20,570); and in all those counties having not less than twenty thousand, two hundred thirty (20,230) and not more than twenty thousand, two hundred fifty (20,250); and in all those counties having not less than thirteen thousand, two hundred twenty (13,220) and not more than thirteen thousand two hundred forty (13,240) according to the last preceding Federal Census; modifying all laws or parts of laws in conflict herewith; and declaring an emergency.”

H. B. No. 740, A bill to be entitled “An Act making an appropriation to be paid out of the General Revenue Fund of the State of Texas, in the sum of One Thousand, One Hundred Sixty-seven and 18/100 ($1,167.18) Dollars, not otherwise appropriated, to cover taxes due by the State of Texas to Walker County, covering the years 1932, 1939 and 1940, inclusive; and declaring an emergency.”

H. B. No. 774, A bill to be entitled “An Act to fix the maximum rate of tax to be levied for school purposes in all independent school districts having a scholastic population, according to the 1940-1941 scholastic census, of not less than 344 and not more than 347 approved scholastics, whether such school district is organized under general or special law; provided that no such tax shall be levied, collected, abrogated, diminished, or increased, and no bonds shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held for such purpose; prescribing the qualifications of voters eligible to vote in such election; and declaring an emergency.”

H. B. No. 786, A bill to be entitled “An Act amending Article 4618 of the Revised Civil Statutes of Texas, 1925, and providing for the sale of a homestead, by the wife, if her separate property, or the community property of husband and wife, where the husband is insane or has permanently abandoned the wife; and declaring an emergency.”

H. B. No. 811, A bill to be entitled “An Act validating the incorporation of the City of Uvalde, Texas, a city having a population in excess of five thousand (5,000) heretofore operating in good faith under a charter adopted September 18, 1934, in accordance with Chapter 13, Title 28 of the 1925 Revised Civil Statutes of Texas; providing that the incorporation of the City of Uvalde shall not be held invalid on account of irregularities in the appointment of a charter commission or lack of authority to appoint such commission or on account of irregularities in ordering the incorporation election, the election proceedings, and/or the manner of submitting the charter to a vote of the electorate, and/or the failure to submit to and have the electorate vote upon the charter in separate parts, articles or subjects, and/or in including any territory in the corporate limits of said city, and/or irregularities in canvassing the returns and declaring the result of the election and/or incorporation proceedings and/or failure to comply with any provision of Chapter 13, Title 28 of the 1925 Revised Civil Statutes of Texas; and validating all governmental proceedings performed, enacted and/or instituted and/or ordained in good faith by the governing body of the city since its incorporation or attempted incorporation, respectively; and declaring an emergency.”

H. B. No. 768, A bill to be entitled “An Act relating to the subject of bonds, notes and warrants heretofore issued by the Board of Regents of the University of Texas, the Board of Directors of the Agricultural and Mechanical College, the Board of Directors of the Texas Technological College, the Board of Regents of the State Teachers Colleges, the Board of Regents of the Texas State College for Women, and the Board of Directors of the Texas College of Arts and Industries, under Chapter 5, Acts of the Second Called Session of the Forty-third Legislature and amendments thereto, and all other laws, including the validating of the bonds, warrants and notes issued by
said Boards, the resolutions and other proceedings authorizing the issuance and the provisions made for the payment of principal and interest of such bonds, warrants and notes; and making it the duty of said Boards to fix, maintain and collect charges or rates sufficient to pay interest and principal as it accrues and matures on bonds, warrants and notes herefore or hereafter issued, (pursuant to resolutions herefore adopted), and to create and maintain reasonable reserves as prescribed in resolutions authorizing the issuance of such securities; and declaring an emergency.

H. B. No. 889, A bill to be entitled "An Act making it unlawful to kill quail in Cherokee County except on certain days of the week during the period beginning December 1st and ending January 16th each year; fixing a bag limit; providing a penalty; defining what constitutes hunting; and declaring an emergency."

H. B. No. 881, A bill to be entitled "An Act providing for the allowance of expenditures for office and traveling expenses of the county superintendent of public instruction in certain counties to apply both when such counties have a school superintendent and when the county judge is the ex officio county superintendent; repealing all laws or parts of laws in conflict; and declaring an emergency."

H. B. No. 892, A bill to be entitled "An Act making it unlawful to take or kill by trap, snare, or deadfall any fur-bearing animals in the County of Harrison; providing certain exceptions; providing the length of this Act; prescribing a penalty; and declaring an emergency."

H. B. No. 893, A bill to be entitled "An Act providing an open season for mourning doves in Van Zandt and Rains Counties, from September 1 to October 31 of each year, and providing that other laws of this State with reference to taking and hunting mourning doves shall apply in said counties; fixing a penalty for violation of this Act; repealing all laws in conflict; and declaring an emergency."

H. B. No. 906, A bill to be entitled "An Act fixing a five year closed season on quail in De Witt County and providing certain penalties for violations."

H. B. No. 908, A bill to be entitled "An Act to provide for the maximum maintenance and bond tax rate for school purposes in all common school districts in counties having a population of not less than twenty-three thousand nine hundred and nine (23,909) and not more than twenty-three thousand nine hundred and fifteen (23,915) inhabitants, according to the last preceding Federal Census, and which counties have an assessed valuation in excess of Twenty Million ($20,000,000.00) Dollars according to the last preceding approved tax role in such counties; repealing all laws and parts of laws in conflict herewith; and declaring an emergency."

H. B. No. 916, A bill to be entitled "An Act providing that it shall be unlawful to buy or sell certain fish caught in Stephens County; any person found guilty of this Act shall be fined not less than Five ($5.00) Dollars nor more than One Hundred ($100.00) Dollars; and declaring an emergency."

H. B. No. 918, A bill to be entitled "An Act applicable to all counties in this State having a population of not less than fifty thousand, nine hundred and fifty (50,950), nor more than fifty-one thousand, one hundred (51,100), in all counties; repealing all laws or parts of laws in conflict; and declaring an emergency."
of parts of laws in conflict herewith are repealed; and declaring an emergency.

H. B. No. 921, A bill to be entitled "An Act to declare a closed season on the killing of deer, dove and quail in Culberson County and the killing of quail and dove in Hudspeth County for a period ending February 1, 1945; prescribing a penalty therefor; and declaring an emergency."

H. B. No. 922, A bill to be entitled "An Act to fix the maximum rate of tax to be levied in all independent school districts having a scholastic population of not more than sixty-four hundred seventy-five (6,475), nor less than sixty-four hundred twenty-five (6,425), according to the 1940-1941 scholastic census; and declaring an emergency."

H. B. No. 924, A bill to be entitled "An Act providing for a closed season on wild deer and wild turkey in Schleicher County for a period of five (5) years; prescribing penalties for the violation of this Act; repealing all laws in conflict; and declaring an emergency."

H. B. No. 927, A bill to be entitled "An Act providing for a closed season for mourning doves in Palo Pinto County, from September 1 to October 31 of each year, and providing that other laws of this State with reference to taking and hunting mourning doves shall apply in said county; fixing a penalty for violation of this Act; repealing all laws in conflict; and declaring an emergency."

H. B. No. 932, A bill to be entitled "An Act providing for the closed season on wild deer, wild turkey, quail and javelina in Live Oak County, Texas, for a period of three (3) years; providing, however, none of the provisions of this Act shall apply to that part of Live Oak County known and defined as the J. Frank Dobie Game Preserve; prescribing penalties for the violation of this Act; repealing all laws in conflict; and declaring an emergency."

H. B. No. 936, A bill to be entitled "An Act providing that it shall be lawful in Cass County, Texas, for any person to kill, take, or have in his possession for barter or sale any wild fox or the pelts thereof from December 1 to December 31, inclusive, of any year; repealing all laws in conflict; and declaring an emergency."

H. B. No. 977, A bill to be entitled "An Act providing for a closed season for turkey in Angelina and Tyler Counties for five (5) years; prescribing a penalty for the violation of this Act, and repealing all laws in conflict."

H. B. No. 943, A bill to be entitled "An Act creating Eolian Common School District No. 4 wholly established in Stephens County, Texas, including therein the present Eolian Common School District, and certain territory in Stephens County not now a part of said district, defining its metes and bounds within Stephens County and repealing all laws and statutes in conflict herewith; and declaring an emergency."

H. B. No. 949, A bill to be entitled "An Act providing that it shall be lawful to kill quail in Van Zandt and Anderson Counties only on Monday, Wednesday, and Friday of each week after the first day of December, 1941, and continuing until and including the 10th day of January, 1942, and during the same time for each year thereafter on the same days of the week; providing the number of quail that can be killed on any one day; prescribing violations of this Act and providing the penalties the for; and declaring an emergency."

H. B. No. 952, A bill to be entitled "An Act providing for the use of certain set nets or grill nets in the waters of Montgomery County; specifying conditions under which such nets may be used; providing a penalty; repealing all laws in conflict herewith; and declaring an emergency."

H. B. No. 954, A bill to be entitled "An Act amending H. B. No. 884 of the Forty-second Legislature, as amended by H. B. No. 1109 of the Forty-sixth Legislature, so as to add thereto a new Section to be known as Section 1a, following Section 1 thereof, to provide that it shall be lawful to take, capture, shoot or kill Collared Peccary or Javelina in the Counties of Webb, Starr and Zapata at any time; prohibiting the sale of and any Collared Peccary or Javelina, or any part of the same, in said counties; prescribing penalties; and declaring an emergency."

Respectfully submitted,

E. R. LINDLEY,
Chief Clerk, House of Representatives.
The President signed in the presence of the Senate, after its caption had been read, the following enrolled resolution:

H. C. R. No. 98, Authorizing the State Highway Department of Texas to lend to the City of Groesbeck certain equipment.

Recess

Senator Mauritz moved that the Senate adjourn until 10:00 o'clock a. m. tomorrow.

Senator Van Zandt moved that the Senate recess to 10:45 o'clock a. m. tomorrow.

Question first recurring on the motion of Senator Van Zandt, it prevailed; and the Senate, accordingly, at 5:45 o'clock p. m., took recess to 10:45 o'clock a. m. tomorrow.

Message from the House

The Assistant Reading Clerk of the House was recognized by the President to present the following message:

Hall of the House of Representatives, Austin, Texas, April 29, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has refused to adopt the Conference Committee report on H. B. No. 405 by a viva voce vote, and requests the appointment of a new Conference Committee. The following have been appointed on the part of the House:

Messrs.: Bell, Heflin, Hardeman, Bruhl, and Senterfitt.

Respectfully submitted,

E. R. LINDLEY,
Chief Clerk, House of Representatives.

The President appointed Senators Spears, Hazlewood, Sulak, Brownlee and Stone as the committee on the part of the Senate to escort Archbishop Lucey to the joint session and the Speaker's rostrum.

The President of the Senate and the Honorable Senators then repaired to the Hall of the House for the joint session.

The Senate was announced at the Hall of the House, and the Senators were admitted and escorted to seats prepared for them along the aisle.

The President of the Senate, by invitation of the Speaker, occupied a seat on the Speaker's stand.

The Speaker asked the Members of the House to register, and a quorum of the House was announced present.

The President of the Senate called the Senate to order, and announced a quorum of the Senate present.

The Most Reverend Robert E. Lucey, Archbishop of San Antonio, was announced at the bar of the House, and was escorted to the Speaker's stand by Senators Spears, Hazlewood, Sulak, Brownlee and Stone on the part of the Senate, and by Representatives Bell, Leyendecker, Dwyer, Hardeman, Vale and Anderson on the part of the House.

The Speaker presented Representative John Bell, who introduced Most Reverend Robert E. Lucey to the joint session.

Archbishop Lucey then addressed the joint session.

At the conclusion of the address, the President announced the business of the joint session completed and requested the Senators to repair to the Senate Chamber.

In the Senate

The President called the Senate to order at 11:50 o'clock a. m.
Report of Conference Committee on House Bill 76

Senator Van Zandt submitted the following report of the Conference Committee on H. B. No. 76:

Conference Committee Room, Austin, Texas, April 23, 1941.

Hon. Homer Leonard, Speaker of the House of Representatives;
Hon. Coke R. Stevenson, President of the Senate.

Gentlemen:

We, your Free Conference Committee appointed to adjust the differences between the Senate and the House on H. B. No. 76:

A bill to be entitled

"An Act for the purpose of releasing the interest and penalties on all delinquent ad valorem and poll taxes that were delinquent on or before July 1, 1940, due the State, any county, common school district, road district, levee improvement district, water improvement district, and water control and improvement district, irrigation district, and other defined subdivisions of the State, provided same are paid on or before November 1, 1941; and providing further that this Act releasing penalties and interest shall not apply to cities, towns, and villages, and special school districts, and independent school districts unless and until the governing body thereof finds that unusual or excessive default in the payment of ad valorem and poll taxes has occurred and that an extension of time for the payment of said ad valorem and poll taxes will accelerate the payment thereof, and such governing body has adopted a resolution or ordinance evidencing such finding, and upon the recording of such findings of fact shall have the authority to put in force and effect the provisions hereof as to any such city, town, or village, or special school district, or independent school district; providing for the release of costs under certain circumstances; providing that anyone desiring to pay at any time delinquent taxes for one year only wherein such taxes are delinquent for more than one year shall have the right to do so without remission of penalties and interest; providing that any person, firm or corporation availing themselves of the provisions of this Act shall be required to pay all delinquent ad valorem taxes due the State and county on any specific piece of property on which such taxes are delinquent before receiving the benefits of this Act; providing that all laws in conflict with this Act are expressly suspended during the term of this Act; providing that if any Section, clause, sentence, paragraph, or part of the Act be judged to be invalid by any court of final or competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder of the Act; stating the policy of the Legislature; and declaring an emergency."

Have had the same under consideration and beg to advise that we have reconciled our differences and recommend the passage of said H. B. No. 76 in the form hereto attached.

DWYER,
HUTCHINSON,
MANNING,
PACE,
ISAACKS,
On the Part of the House;

VAN ZANDT,
MARTIN,
SHIVERS,
On the Part of the Senate.

H. B. No. 76, A bill to be entitled "An Act for the purpose of releasing the interest and penalties on all delinquent ad valorem and poll taxes that were delinquent on or before July 1, 1940, due the State, any county, common school district, road district, levee improvement district, water improvement district, and water control and improvement district, irrigation district, and other defined subdivisions of the State, provided same are paid on or before November 1, 1941; and providing further that this Act releasing penalties and interest shall not apply to cities, towns, and villages, and special school districts, and independent school districts unless and until the governing body thereof finds that unusual or excessive default in the payment of ad valorem and poll taxes has occurred and that an extension of time for the payment of said ad valorem and poll taxes will accelerate the payment thereof, and such governing body has adopted a resolution or ordinance evidencing such finding, and upon the recording of such findings of fact shall have the authority to put in force and effect the provisions hereof as to any such city, town, or village, or special school district, or independent school district; providing for the release of costs under certain circumstances; providing that anyone desiring to pay at any time delinquent taxes for one year only wherein such taxes are delinquent for more than one year shall have the right to do so without remission of penalties and interest; providing that any person, firm or corporation availing themselves of the provisions of this Act shall be required to pay all delinquent ad valorem taxes due the State and county on any specific piece of property on which such taxes are delinquent before receiving the benefits of this Act; providing that all laws in conflict with this Act are expressly suspended during the term of this Act; providing that if any Section, clause, sentence, paragraph, or part of the Act be judged to be invalid by any court of final or competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder of the Act; stating the policy of the Legislature; and declaring an emergency."

Be It Enacted by the Legislature of the State of Texas

Section 1. That all interest and penalties that have accrued on all ad valorem and poll taxes that were delinquent on or before July 1, 1940, due the State, any county, common school district, road district, levee improvement district, water improvement district, and water control and im-
Sec. 1. That all costs of every kind and character that have accrued or attached or that may hereafter accrue or attach to or by reason of delinquent poll or ad valorem taxes on which said poll or ad valorem tax the interest and penalties have been released by any of the provisions of this Act shall be and the same are hereby released and no such costs shall hereafter be charged, collected, or accounted for, provided, however, that any costs that are now due and payable to any officer or official shall remain a valid obligation, notwithstanding the provision hereof.

Sec. 2. That all costs of every kind and character that have accrued or attached or that may hereafter accrue or attach to or by reason of delinquent poll or ad valorem taxes on which said poll or ad valorem tax the interest and penalties have been released by any of the provisions of this Act shall be and the same are hereby released and no such costs shall hereafter be charged, collected, or accounted for, provided, however, that any costs that are now due and payable to any officer or official shall remain a valid obligation, notwithstanding the provision hereof.

Sec. 3. Anyone desiring to pay at one time all the delinquent taxes for only one year wherein such taxes are delinquent for more than one year shall have the right to pay the same but without remission of penalties and interest; provided however, that any person, firm or corporation availing themselves of the benefits of this Act shall be required to pay all delinquent ad valorem taxes due the State and county on any specific piece of property on which such taxes are delinquent before the penalties and interest may be released as herein provided.

Sec. 4. All laws and parts of laws in conflict herewith are hereby expressly suspended during the term of this Act so far as they may affect this Act.

Sec. 5. It is provided further that in case any Section, clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent or final jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the Section, clause, sentence, paragraph, or part thereof directly involved in the controversy in which said judgment shall have been rendered.

Sec. 6. This bill is enacted into a law because of the dire need of school districts and other subdivisions for funds from delinquent taxes to continue to function, and for the further purpose of giving the distressed taxpayers an opportunity to pay their taxes without the burden of the penalties and interest that have accrued, but it shall not be understood from the enactment of this law that it is the policy of the Legislature to continue to remit penalty and interest. The Forty-seventh Legislature here declared that a continuation of the policy of remitting penalty and interest on delinquent taxes would be detrimental to the best interest of this State and would, if continued, lead to still greater delinquencies in tax payments than has ever been in the history of this State.

Sec. 7. The fact that millions of dollars in taxes are now due and have been due to the State and its subdivisions for many years past, by people who would meet their obligations to the State government if the heavy costs and penalties and interest were omitted, creates an emergency and an imperative public necessity demanding that the constitutional rule which requires all bills to be read on three several days in each House be suspended, and said rule is hereby suspended, and said Act shall be in force and take effect from and after its passage, and it is so enacted.
Senate Resolution No. 116

Senator Vick, by unanimous consent, offered at this time the following resolution:

Whereas, The Honorable Chas. B. Schuler, distinguished citizen of Waco, is now in the city and at the bar of the Senate; now, therefore, be it

Resolved, That Mr. Schuler be extended the privilege of the floor of the Senate.

The resolution was read, and by unanimous consent, it was considered immediately and was adopted.

Senate Bill 444 on First Reading

Senator Metcalfe moved that Section 5 of Article 3 of the Constitution be suspended to permit his introducing a bill, the provisions of which he explained.

The motion prevailed by the following vote:

Yeas—30

Aikin    Lemens
Beck     Lovelady
Brownlee  Martin
Chadick  Mauritz
Cotten    Metcalfe
Fain     Moffett
Formby   Moore
Graves   Ramsey
Hazlewood  Shivers
Hill     Smith
Isbell    Spears
Kelley   Stone
Lanning  Sulak

Van Zandt  Winfield
Vick       York
Weinert

The following bill then was introduced, read first time and referred to the Committee on Military Affairs:

By Senator Metcalfe:

S. B. No. 444, A bill to be entitled “An Act making it unlawful for any person, not a member of the Texas Defense Guard, to wear the shoulder patch, the arm brassard, or the collar ornaments duly prescribed as a part of the uniform of said Defense Guard, or any imitation of said articles; also making it unlawful for any member of said Defense Guard to purchase or have in his possession such articles of uniform, or any imitation thereof, unless they are purchased through or on approval of the Adjutant General of Texas; also making it unlawful for any person to sell, offer for sale, dispose of, or purchase any such articles except when and as authorized under regulations prescribed by the Governor; also providing the punishment for offenses against such provisions; and declaring an emergency.”

Adjournment

Senator Lovelady moved that the Senate adjourn until 10:00 o'clock a.m. tomorrow.

The motion prevailed; and the Senate, accordingly, at 11:55 o'clock a.m., adjourned until 10:00 o'clock a.m. tomorrow.
Memorial to Honorable John Henry Kirby

The following memorial to Honorable John Henry Kirby, by Mr. E. J. Fountain, attorney-at-law, was ordered printed in the Journal, on motion of Senator Moore:

Whereas, It is needful when the institutions dear to free men are periled, to remember the lives and deeds of mighty men whose characters were forged by and dedicated to the institutions of freedom, so that their courage and faith, building and developing our country for the happiness and comfort of all mankind, shall renew faith and courage in other free men to defend and preserve the foundations and framework of our liberty, as is the bounden duty and high privilege of all free men; and

Whereas, Remembering always that the institutions of the free men of this oldest democracy in the world, even oldest government in the world, are based on the Constitution of the United States, resulting, in its final form, in many compromises between free men; and

Whereas, John Henry Kirby was a man who rose from poverty and humble circumstance to great power and rare achievement, because his country was free, and with great works labored to preserve and defend it in the freedom and liberty of all men; and

Whereas, His deeds and his faith are examples to set afire in other men the faith and courage of freedom which have always been and are invincible against all enemies of freedom; and

Whereas, This man's great life in its large outlines should publicly be told so that all may know it and feel its inspiration, but in considering it, remember that he believed in all of the Sermon on the Mount, and particularly verses seventeen and eighteen, which read:

"17. Think not that I am come to destroy the law, or the prophets; I am not come to destroy, but to fulfill.

"18. For verily I say unto you, Till heaven and earth pass, one jot or one title shall in no wise pass from the law, till all be fulfilled."

To commemorate the memory of John Henry Kirby, it is necessary to speak from the soul; to forget restraint; to love the Constitution; to believe in every word of the Sermon on the Mount, and to do right without regard of consequence.

Restraint in the fundamentals of his faith was alien to Mr. Kirby. Those fundamentals were the Constitution of the United States and the Sermon on the Mount. Restraint in the telling of his faith, and the deeds it fathered, would betray both the faith of Mr. Kirby and its lesson.

Mr. Kirby's deep faith created much for Texas. He laid the foundations for an important part of Texas industry, which has promoted the happiness and prosperity of Texas communities and institutions. He did much to create love for the Constitution, to create love among men for each other, and to order social and industrial relations in a Christian spirit.

When he considered himself right, he was reckless in what he said. To those around him in whom he believed his confidence was undaunted. Those whose lives did not fulfill his ideals, he either passed with a smile or complete silence. In his life, there were some he trusted and who were false; but Mr. Kirby turned from them with faith unshaken. There were those who disagreed with him in honesty and with high purpose. From such there was a parting of the ways; but in the end he and they knew that in fundamentals there were no differences. In men, who live like Mr. Kirby, fired by the faith of free men, courageous and able to turn their faith to works, lies the security of freedom.
To say the many things that should be said is a difficult task; this man's life was large, his activities many; and to understand his character and the meaning of his life many things must be considered.

In this resolution the deeds and the words of Mr. Kirby and his contemporaries should speak. The picture they paint whether good or ill, should be the truth, and of its merit the people will judge.

His kind of life threw off restraints of dictators. It was akin to those lives that made the drums beat and the guns roar at San Jacinto. It was the same kind of a life that enabled that small band of patriots to defeat another dictator on that memorable day when Texas was born. His friends, without his knowledge, thought he should be sent to the United States Senate and thus follow in the footsteps of Houston, Coke, Reagan and others, the mention of whose names bring to us the same feeling of reverence that we feel in a House of God.

Lumberman, lawyer, statesman, financier and philanthropist, the activities and interests of John Henry Kirby over a period of a half a century covered a widely diversified range of national scope. He was probably the best known lumberman in the United States and was recognized as one of the most valuable, most public-spirited and most widely loved citizen of the Lone Star State. From a farm boy on the Texas frontier to his position as one of the great industrial and civic leaders of the Nation, his life was a succession of hard-fought battles, and his well-rounded life of achievement and unselfish service should serve as an inspiration and a model of every citizen.

He was born in a log cabin near Peach Tree Village, Tyler County, on November 16, 1860. His father, John Thomas Kirby, was a pioneer citizen of East Texas, having moved to the Lone Star State in 1850. His mother was Sarah Payne, a member of a well-known Mississippi family. Her father, Nelson Payne, and his father, Jonathan Payne, both served with Andrew Jackson.

Mr. Kirby's early education was obtained at home under the able tutelage of his mother. Tyler County, at that time, was thinly populated and public and private schools in East Texas did not exist. He had progressed well in his studies at home and at the age of nineteen years his parents sent him to a country school for one term, after which he secured sufficient funds to enable him to attend for one term the Southwestern University at Georgetown, Texas. Here he met a number of other fine men who later made their mark on the professional and political life of Texas. Among his schoolmates were Robert L. Henry, Frank Andrews, R. A. Johns and Judge R. E. Brooks. What stalwart schoolmates these were!

Following his brief schooling, he became a clerk for the Honorable S. Bronson Cooper, a member of the Legislature and later a member of Congress. Here, while investigating what other States were doing with their forests, he realized the value of this State's own timber in East Texas. While in the service of Mr. Cooper he began the study of law since it was his desire to become a lawyer, and he applied himself to the task of securing an education along this line with enthusiastic determination.

In 1885 he was admitted to the Bar at Woodville and engaged in practice there until 1890. Then realizing the greater opportunities and facilities offered by a larger city, and foreseeing the rapid growth of Houston with its prospective deep water-way, Mr. Kirby moved to Houston. From 1890 to 1900 he engaged in the practice of law in that city, associating himself with the late Judge Edwin Hobby, father of former Governor William P. Hobby. Mr. Kirby's life from the time he left Woodville is the history of the lumber industry in the South, Railroading in East Texas as well as much of the industrialization of that great area. The beginning of that great history, even at this time, was already taking shape in his fertile mind.

This poor boy with no means except natural ability, willingness to work and a charming personality, soon arose step by step to lawyer, railroad
builder and lumber magnate to aid materially in moldin the foundation of the greatest industrial empire in the Southwest.

Mr. Kirby's great dream was the development of Texas. He realized then that transportation was essential, and not only transportation, but competition in transportation, to the development and prosperity of farms, industries and cities. He built and acquired railroads of his own; more important, he worked until he had induced a great trunk line railroad to build and purchase in East Texas, opening the markets of that vast railroad system to the prosperous farms, the humming mills and the mighty cities, which Mr. Kirby, in his dreams, already saw. In his own words:

"Prior to the sale of the Santa Fe in 1900, I was having certain difficulties in regard to the successful operation of that line and in connection with other roads. As the law then stood, and being a practicing lawyer, I thought I knew something about it, there was no public authority in this country that could compel carrier corporations to establish divisions among themselves.

"At that time I had four mills, and, in order to get into the territory, had to pay local rate into Beaumont and then take the regular rate open to everybody, the public rate from there to their destination, wherever they were going. That was a handicap and nobody wanted to build on my line.

"The Gulf and Interstate, from Bolivar to Beaumont, which was built by some ambitious Kansans on their way from the Gulf to Winnipeg, had been completed into Beaumont. That was my opportunity, and I bought the Gulf and Interstate. This was all prior to 1900. When I got the Gulf and Interstate, I approached all the railroads running into Galveston; the Santa Fe, the MK&T, and the I&GN and the GH&H for divisions out of Galveston on my lumber originating in Beaumont and up on my line, and they accorded me liberal division. I hauled this lumber to Port Bolivar and ferried it across to the mainland and delivered it to these carrier lines under these freight divisions. I got practically all of the tonnage out of Beaumont, that is, all from the three big mills.

"The Gulf and Interstate had no traffic other than my traffic, and after the Southern Pacific had taken care of me on divisions, I didn't need it at all. During that period, Sam Laveris, of Sherman, Texas, a friend of mine, and who was Chairman of the Texas Pine Land Association, had become interested in a line from Conroe to Cleveland. It was called the Texas, Louisiana & Eastern. They built it from Conroe to Cleveland. It became involved in financial difficulties. I, as an attorney, represented the bondholders or most of them, and it was sold under that receivership and bought by the Santa Fe. After that, along in 1900, or late in 1899, I was first approached by Mr. Paul Morton, traffic manager of the Atchison, the Atchison System, as it was then called in the North, but now nearly everybody calls it the Santa Fe, who called on me in Boston to inquire about tonnage in East Texas, because I had the reputation at that time of being very well informed regarding the location of the trees and what quantity of trees in those general localities.

"Well, to make a long story short he said the Santa Fe might be interested and he invited me to New York to meet Mr. Ripley. Of course, I knew of Mr. Ripley and I had probably met him casually before and I was very much interested in having a man of his broad vision and his devotion to the public welfare interested in my country down there. I met Mr. Ripley and a number of his associates, directors in the Atchison, at the Metropolitan Club in New York one night.

"I saw they were interested. So next morning on Mr. Ripley's invitation I met Mr. Ripley and some members of his executive committee at the downtown offices of the Atchison, which according to my present recollection, was in 32 Nassau. I went into Mr. Ripley's office; General Aldace F. Walker, who was the Chairman of the Board and Mr. Ripley was president of the Atchison at that time. Mr. Victor Morawetz was there
and Mr. Ed. Brewind was there, Mr. Fowler of the Jersey Central Railroad was there, Mr. Charley Steele of J. P. Morgan & Company was there in Mr. Ripley's office; some of them had not been present at the dinner the night before so Mr. Ripley had me go over the matter again, which I did, after which he asked me if I was prepared to make them a price and I said I was and I tremblingly named a price and retired. An hour or so later, whatever the time was, when I came again Mr. Ripley said: 'We have decided to take your property and go over to Mr. Morawetz' office and he will prepare a contract between us.' I was especially anxious to have the Atchison in there because it went into the lumber consuming territory. Of all the railroads in the United States that would be valuable to southeast Texas, especially the lumber interest to southeast Texas, the Atchison was that railroad.

"The Panhandle of Texas has no lumber at all. Oklahoma has a little on the eastern edge next to Arkansas, but it is not a lumber producing state, it is prairie. Kansas and Nebraska have no lumber. I was after the lumber market in that territory as that is where the lumber was sold during those days.

"The sale to the Atchison was consummated about a year after I sold the Gulf and Interstate back to Mr. Shanghai Pierce.

"In the early days of my operations as a lumberman and as a railroad executive over in East Texas, I knew from my experience that it was very difficult to get car supply. Those lumber men over there were so hungry for cars they would load flooring on a flat car and take chances on the weather. It was very difficult to get cars. That was one of the reasons for my zealous desire to have the Atchison of all railroads in there, as I wanted an adequate car supply as well as a market. The Atchison reached the consuming territory and they brought enormous trainloads of grain and cotton to Galveston for export or to the elevators there and they had the equipment, and they could send them out into the lumber territory and get a load back for it. In other words, they were hauling grain south from the very territory that I wanted to send lumber north to. The question of car supply was a very important matter to me as a lumberman and continued to be for long after I had sold my road. It remained important until about the War period, that is 1917 and 1918.

"I entered into a contract with the Atchison, Topeka & Santa Fe Railroad Company covering the sale of the Gulf, Beaumont & Kansas City and my other railroad properties over there, dated June 26th, 1900, and I also contracted with the Gulf, Colorado & Santa Fe Railway Company for the sale of ties, which is dated January 1st, 1901, which is the contract I have been testifying about. I organized the John H. Kirby Tie Company for the purpose of carrying that contract out. I think it was incorporated, but, at any rate, I had in mind utilization of the right of way timber in the making of ties so as to conserve the wood, because nearly every foot of the way from Cleveland to Silsbee was through timbered country and all the way from Jasper to San Augustine was in timbered country.

"Mr. Ripley and the others representing the Atchison at the time they entered those contracts with me were also induced to make them so that they might acquire tonnage for the road. They were very much interested in the development of the country. Mr. Ripley was one of the far-seeing patriotic earnest men of the whole Republic in his desire to promote public progress and especially the development of territory served by his system of railroads. They were interested in the development of the country. They were interested in getting tonnage for the Santa Fe, and they were interested in securing a dependable source of ties. They were likewise interested in having their territory amply supplied with building materials in a big volume, because there were some big doings in those days, and Oklahoma was opening up for settlement and Kansas was making big progress, besides, there was a general demand in Iowa, Nebraska, Colorado and Texas."
With free railroad competition assured, by the action of the Santa Fe, with the evils of monopoly avoided, with the markets of several rail systems secured, the door to development was open, and through that door Mr. Kirby walked, to play a dominant part in what followed. With him many cooperated; the result has been such that benefit has come to all. Mr. Kirby's activities have resulted in prosperity to the very railroads to whom he brought competition; and they too have cooperated with Mr. Kirby, and prospered as a result of his dream which he saw come true.

After he had sold his railroad, Mr. Kirby turned his attention to building a great lumber industry. Of course, this country boy who had made this way thus far in a free country had to have some financial help. He had to convince people with money that this country boy's dreams could come true; "that all men are created equal"—"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." This country boy's dream, if sound, was entitled to the same consideration as the dream of a rich boy. And so he worked out with some Baltimore Bankers, and others, a plan whereby there were to be two companies; one, Kirby Lumber Company to run saw mills and manufacture lumber, and the other Houston Oil Company to own the land and grow the trees. A part of this plan was the great dream of conservation, whereby no timber less than sixteen inches in diameter was ever to be cut in the forests, with mills constantly humming in his East Texas.

The charters of both companies bear date of July 5, 1901, the day after the 4th of July. We know this great patriot must have been thinking about freedom, the freedom which made him and his plan possible, and shall make other men and plans like him and his possible, while his mind was on building an industrial empire.

But Mr. Kirby's plans for these two companies, his dreams for the conservation of the trees for the future of his beloved State, met with trouble. By the action of the Baltimore Bankers his plan was hindered for a while, but it was never given up. And while only in part fulfilled, even to his dying day he still hoped to in some manner recreate the dream and yet have the great forests not slaughtered, but protected by the owners themselves. He felt that State protection was not necessary, for men should certainly protect their own natural resources, rather than be made to protect them.

Governor Sayers, later Master in Chancery of his company and of Houston Oil Company, in 1903 referred to Mr. Kirby as "The Father of Industrial Texas."

Shortly thereafter the original Baltimore Bankers wanted faster revenues rather than conservation, and because of such desire blocked Mr. Kirby's conservation dream. They wanted him to slaughter the great forests by cutting timber of too small dimensions for proper conservation principles, to constantly keep available in Southeast Texas the magnificent timber supply then existing. A dispute arose. Both companies were placed in receivership in the Federal Court at Houston, presided over by that great Judge and believer in justice, Waller T. Burns.

In this receivership the qualities of Mr. Kirby which he later impressed so deeply upon the life of his State and Nation, and which we try in these resolutions to express, are beautifully illustrated.

In the group surrounding Mr. Kirby, who always believed all men honest and true until they proved themselves otherwise, were some unworthy of his trust, and there was an attempt to defraud the two companies of enormous quantities of land. At one hearing an unfaithful employee had thrown a gun on an adverse party, and the matter came before Governor Sayers as Master, and he had taken to wearing his gun for protection from the unworthy element. This came to the knowledge
of Judge Burns. Like Mr. Kirby, he loved justice and right doing, although at that time he and Mr. Kirby were scarcely acquainted. To be sure that the occurrences just narrated were not repeated, this great Federal Judge went on an errand, not an errand to be trusted to a Marshal or a bailiff or a clerk, because he wanted justice done always, to the lumber company's office, and left word that there should be no more such trouble.

Mr. Kirby, his life at times in danger, walked with head erect, purpose firm and courage high, got rid of the then unworthy element in his organization, and did his part to see that the properties involved were restored to the rightful owners.

Then came the time about 1908 to reorganize these industrial properties, and Mr. Kirby again turned to his friend, Mr. Ripley, for funds to see that all of the creditors of his company were paid. Mr. Ripley again accommodated Mr. Kirby and the matter was worked out. But the details of how Mr. Kirby got the money to pay off all those who were his creditors is minor. He paid his honest debts, including what he then owed the Houston Oil Company, with money he got from the Santa Fe Railroad.

Now, the years rolled on to war time; and Mr. Kirby stood with his industries in the front, producing timbers for ships, for railroads and other needed lumber products. He stood four-square that a man should do his duty by his country.

Again the years rolled. Mr. Kirby's conservation dream was partly realized through a contract with Houston Oil Company; but Mr. Kirby no longer controlled that company; and the contract was about to expire. By further dealing with Houston Oil Company, Mr. Kirby managed to continue further the conservation of Texas timber.

It is little wonder that such a man could achieve his objectives in dealing with others. His dealings with Houston Oil Company show us the man's quality. After the original receivership of both Houston Oil Company and Kirby Lumber Company, controversies existed between the two companies and many controversies unsettled were pending. It was the duty of Mr. H. M. Richter, as an employee of the Houston Oil Company, to make an estimate of the timber for the purpose of making a new contract with Mr. Kirby. Mr. Kirby, ever thoughtful of his minority stockholders, told Mr. Richter: "I will stand on LeMieux Brothers' estimate, whether over or below your estimate." When the settling time came the LeMieux estimate cost Mr. Kirby a quarter of a million dollars more than Mr. Richter's estimate; and Mr. Richter reports that Mr. Kirby never hesitated, but kept the letter of his word.

In the negotiations Mr. Kirby had many lawyers, including his old standby, Mr. John G. Logue. They were all conferring in a hotel in New York. Among others representing Mr. Kirby was a certain lawyer, a stranger to the regular company's retainer, who remarked that a claim against Mr. Kirby was barred by limitation. Mr. Kirby arose, asked the gentleman to withdraw and no longer represent him, and stated he would rely on his old friend Logue, and said: "So far as I am concerned, no honest claim is barred by limitation." And this man carried in his pocket a copy of the Sermon on the Mount.

Now, industrial strife commenced to arise in this country. Mr. Kirby gave considerable thought to this matter and what should be done about it, and finally one day he wrote the Ten Commandments of Industry. These are so worth preserving in these times when strikes are preventing us from getting ready to face an enemy who has destroyed democracy after democracy that they should be quoted in full. They are:
"To Organized Labor

1. Thou shalt not permit any of thy members to place the union card above our country’s flag.

2. Thou shalt not deny to any man, at any time, at any place, the right to work as a free man and to receive wages as such.

3. Thou shalt not demand for any worker a good day’s pay for a bad day’s service.

"To Capital

4. Thou shalt pay a fair living wage to each and every one of thy workers.

5. Thou shalt furnish a safe and healthful place in which, and safe appliance with which, thy employees may work.

6. Thou shalt operate thy business as continuously as its nature will permit, to the end that labor shall be regularly employed and that the public may not suffer for the living necessities furnished through the medium of thy activities.

7. Thou shalt not demand extortionate profits, but shall be content with a fair return upon the investment used and useful in thy business.

"To the General Public

8. Thou shalt willingly pay a fair price for all commodities required by thee from labor and capital, to the end that labor shall have a just reward and capital a fair return.

9. Thou shalt pay thy taxes cheerfully and honestly to the end that the obligations of the State to all its people may be promptly and properly fulfilled, liberty and justice safeguarded and the general public welfare assured.

"To Everybody

10. Thou shalt honor and love thy government, for it is the people’s government, the best ever devised by man, and there is none other like it in the world.”

Mr. Kirby was blessed with contended employees; he gave them reason for content. At Christmas time he rarely failed to remember them, some 2,000 men and their families. Because of his great affection for the Book of all Books, on one Christmas he gave to each employee a Bible containing this charge:

"The general diffusion of the Bible is the most effectual way to civilize and humanize mankind; to purify and exalt the general system of public morals; to give efficacy to the just precepts of all law; to emphasize the wisdom of all the relations of internation, social and domestic life. To the Bible we are indebted for the progress made in true civilization and to its influence we must look for guidance in the future.

"The Bible is the light of the understanding, the joy of the heart, the fulness of hope, the clarifier of affections, the consoler of sorrow, the guide of the soul, the lamp of the feet, the light of the pathway, the telescope sent from heaven to reveal to the eye of man the way of life here and the amazing glories of the hereafter.

"I speak as a man of the world to men of the world when I say the Bible is the Book of Books and needs to be read at all ages in all conditions of human life. I gladly subscribe my sincere faith in and love for the Holy Bible and would commend it to the earnest persual and affectionate regard of all my friends.”

There came a time when the control of his company passed to others; and while the company did well in the sense of paying dividends, it did not do so well in its treatment of employees and bondholders. Employees
were discharged right and left. The morale of the organization was bad. Bondholders became unhappy. Everything was unhappiness; everything was discontent. There was not the feeling of "love one another" that had been in this company when Mr. Kirby alone was in control.

At about this time too, his new associates convinced him that he should issue a personal bond issue of many millions secured by the bonds of the company. It has been said that this is the larges: individual bond issue ever issued. It was, of course, paid promptly and fully; but during the period following that bond issue, the weakness and yet the strength was displayed.

Many imposed upon him, getting his endorsements, and getting his interest and money for their projects. For illustration, and this shows again the man living the life of the Sermon on the Mount—his endorsements for friends amounted to several hundred thousand dollars—when the obligation came due, his financial fortunes were beginning to fade. A bank filed suit against him. Mr. Logue, the lawyer mentioned above—when someone said he was the greatest lawyer in Texas, Kirby replied, "Remove the territory limitation and I will agree with you"—advised Mr. Kirby that he could win the law suit. Mr. Kirby replied that the bankers had loaned the money on his name, not the names of others, and the notes must be paid; that he could not pay them immediately; that Mr. Logue should work out a manner of extension.

The considered opinions of Mr. Kirby's fellow citizens show the man and his meaning to us. During his lifetime, many spoke of him, and to him in the manner of a few whose words are here reproduced:

Address by Charles F. Greenwood:

"It was there, on a little farm, that he learned the dignity of labor. It was there, amid the rural scenes of country life, that his imagination was first touched. It was there that his character was forming and his genius developing for the great future that awaited his restless energy. There, at Peachtree Village, the unquenchable fires of ambition began to burn in his brain. It was there, in a virgin forest, far removed from cities, from skyscrapers, from the busy marts of trade and the great congested centers of commerce and business, with his heart beating like a drum, that he caught inspiration from his environments and began his remarkable career. From that time on his progress has been onward and upward. His life has been guided by principle, and consideration for the rights and happiness of others. He has walked the highway of right. He has never bartered away his manhood for money or power. He has never bent the coward's knee that 'thrift might follow fawning.' Whether on the mountain top of success or in the deep valley of sore distress, he has been sincere, valiant and true. His every heart throb and pulse beat have been in harmony and with the glory and honor of his country. He is a statesman of the old school. He understands and knows how to value the philosophy of this government. He is a patriot, and knowing him in the most intimate relation, I have no hesitancy in declaring that if emergency demanded, he would give up both life and fortune for the preservation of our free institutions."

Address by John T. Scott:

"Kirby is a man that cares but little, if anything, for the plaudits of men, but upon an occasion like this when we all speak from the depth of our hearts and tell in his hearing of his wonderful love, he is but human, and being human, I know that he will appreciate it. He is a man that has always stood for the right. If there is a man in this country that can point to anything in Mr. Kirby's life or career, a any transaction and say that 'that was not absolutely straight,' I have yet to hear it."
Address of General Jacob F. Wolters:

"Gentlemen praise the achievement of John Henry Kirby, they praise his stalwart patriotism and his philanthropy. I join in all that, but that I think which stands out most conspicuously in this man's life is this: Many men started with poverty and achieved riches and success; many men went from humble stations in life to the highest pinnacles of fame in our great nation; but few men have climbed the ladder of success, retaining the same human touch that distinguished the boy before he achieved success."

Address by Colonel Louis J. Wortham:

"This man, whom we delight to honor on this occasion, is one of the rarest and best men I have known in Texas, or out of it. In my long career I have come in contact with many men who deserve to be called great by their fellows, and, while I have not measured accurately their distinguishing characteristics of real greatness, I shall not apologize for the sentiment I have just uttered that John Henry Kirby is the rarest and best of men, in the proper sense of those adjectives, I yet have known."

"This man has met 'with triumph and disaster' and treated both those imposters in the same way."

Address by Judge J. C. Hutcheson, Jr.:

"Kirby is such a lawyer as Burke immortalized in moving words when he spoke of the American colonists: 'Such men are acute, dexterous, prompt in attack, ready in defense, full of resource. In other countries the people, more simple and of a less mercurial caste, judge of an ill principle in government only by actual grievance. Here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and sniff the approach of tyranny in every tainted breeze.'

"Such a man is John Henry Kirby. He does not wait until he sees our institutions uprooted before he springs to their defense. He does not wait until the desperate war cry has sounded, and men who stand for good government, with backs to the wall, have had to rally in their last defenses. He knows that eternal vigilance is the price of liberty now, as always. He sniffs the approach of tyranny in every tainted breeze. He insists upon respect for, and observance of the Constitution and the laws before that Constitution and these laws have lost their force through undermining. He is a great business man, a great patriot, a great administrator, because he is a great lawyer, and knows therefore, that if you wait to test a bad principle by its results, you have waited too long. He tests a principle by its inherent badness. He augurs misgovernment from a distance, and when he sees, as we are seeing now, the tendency of groups or organized minorities, I don't care what kind of groups they are or call themselves, whether labor or Klan, or churches, or farmer, or what they are, undertaking to run this government for a group, by a group and of a group, it does not make any difference how apparently good the results of these new theories may temporarily appear to be, he declares that the foundations of the government are assailed, for he knows that when this government ceases to be of all the people, by all the people, and for all the people, it is no longer an American government.

"Ask me about Americanism and who is an American. I will tell you who is an American. That man is an American who prefers hard liberty, to the easy yoke of servitude, who believes like John Henry Kirby does, in the fundamental principles of our government, tested and tried as they have been. Who knows, as John Henry Kirby does, that whenever this government becomes a government by, or for Mr. Gompers, or by, or for Mr. Anybody else, it is not a government of the American people.

"Now mind you, I have always been a friend of Union labor; I have always been a friend of churches, a friend of the Baptist, the Catholic, the Jewish and all other churches; a friend of almost anybody who tries to do right; but whenever anybody or any group, sect, or class of people seek
through organized minorities, to become the government, America is gone, and we know it, and I, and John Henry Kirby, and all you good Americans here and elsewhere are pledged eternally against them."

Address by Ex-Congressman R. L. Henry:

"And I come to pay my tribute as his friend in the days that have gone and his friend after he has wrought these great things for our native State. I congratulate him that he has risen to this high state among his fellowmen, and while we are celebrating his birthday, it but marks an epoch in this State when the sentiment will pour forth, that the expressions uttered here tonight are the expressions of Texas, and will preserve this State and the integrity of this Republic."

Address by Rev. Peter Gray Sears:

"'He is a man who really loves his friends,'—said a man to me the other day of Mr. Kirby. Yes; but more than that, I think. He counts his friends within the sweeping circumference of the whole of humanity. He really loves his fellow-men. He thinks and feels and acts in the terms of human beings. And, as always, beneath the citizen, beneath the statesman, beneath the great lawyer, beneath the great leader of industry,—is the man; and it is the thought of his heart that makes the man; 'as a man thinketh in his heart, so is he.'

'It is just that fact,—the affectionate outgoing of his whole nature for his fellowmen—that gives the peculiar charm to his personality. One of you at that table over there a few moments ago uttered in a spontaneous exclamation of four words the truth of what I am trying to state to you, the secret of his wonderful appeal to all of us who know him at all,—when you cried out:—'Good Old John Henry!'"

Address by Jack Dionne:

"But this I know—regardless of theology, of creed, or of its lack—I always feel when I sit face to face with John Henry, that I am in the presence of a priest in God's biggest, and best, and holiest church—the church of brotherly love.

"And because this man has gone through it all, seeing only his vision of what must come, and never doubted, it seems to me that he is in the greatest and best sense a builder. More than an empire builder—more than a builder of great industrial things. He is a builder of faith in an age of doubt—and that is the greatest thing that a man can build."

Address by Roy Miller:

"John Henry Kirby needs no eulogy. His achievements tell their own story. What he has done, and is always doing, for Texas and human kind in every walk of life is already written large and indelibly on every page of the history that records the glorious progress of our State and nation for more than a quarter of a century."

Address by Hon. Bill Lea, Mayor of Orange:

"'Primarily, that is what John Kirby is, a high-minded man, a great citizen. There can be no more exalted distinction. He has never shirked a duty, and he has never tamely surrendered a right. That is why I honor him. That is why you honor him. That is what all this splendid testimonial speaks. Such is the fine meaning of his career. Such is its lesson to us and to other men.

"It is a wonderful thing to have started as he did, a poor boy beset by obstacle and adversity, and to have arisen, while yet in the meridian of his life, to his commanding station in the business world and the public affairs of the nation.

"'Only in this country, of all the world, is such an achievement possible. And this is why we ought to love our country more than we do, and why we ought to keep it always free, so that in the future other poor boys may have similar and equal opportunity.'"
Address by former Chief Justice Nelson Phillips:

"I have spoken of him as an example of citizenship.

"I give you my conception of the true American citizen.

"He is the man who always wears his citizenship under his hat; who stands in no awe of power, and hence never hesitates to challenge power whenever it is abusive or oppressive.

"He may be a poor man, as frequently he is. He may be an obscure man, as oftentimes we find him in his highest type. But, thank God, he is always a proud man and a free man—too proud to learn as a supplicant in servile dependence upon the bounty of the Government, too free to acknowledge that he is the mere ward of the State—a man so strong that the Government must look to him for its support, and is the subject neither of its succor nor its power.

"He is the man whose pride is that of a gallant, daring, intrepid manhood that bows to nothing on this earth by God and the wife of his bosom; a manhood that can undergo trial and yet be cheerful; that can attain success and remain unspoiled; and that knows how to be tolerant and charitable toward the weaknesses and failings of other men; a manhood without guile, cant or hypocrisy, that has no itching palm, and, above all things, has 'that chastity of honor which feels a stain like a wound.'

"He is the man who lives and reveres the Constitution and because he loves it, obeys it, not just in precept but in practice; who knows that for the attainment of his Government under that great Charter the wisdom of sages was consecrated and the blood of heroes poured out; and that because rooted in sacrifice and devotion and founded upon eternal principles, this Government stands today the fairest and freest the world has known, with its flag everywhere the symbol of the holy thing of freedom.

"He is the man who dispises the demagogue and his base attempts to array one class of the people against another class. He knows that no class Government was ever a free Government. He is unwilling that in this country any class shall profit at the expense or suffer at the hands of any other class, and hence he recognizes here no classes save those of good men and bad men, true men and false men.

"He is the man who knows that in a free country conscience must be free; that without liberty of conscience, there is no liberty. That this means, among other things, that there shall exist here the free right of religious belief, and, more than that, the right to exercise that great privilege freely and without ban or proscription. He knows that one of the things for which our fathers came to these shores was the right to worship God according to the dictates of their own conscience; and among other things he is determined that that right, here, shall, by the Eternal, remain free.

"He is the man who knows that this is a government of laws; that in its essence the law must be independent and fearless; and to the great end that 'none shall be so high as to be beyond its power, or so low as to be beneath its care'; its administration must equally be in the hands of independent and fearless men.

"He is the man who prizes individual liberty. He remembers that there was such a man as Patrick Henry. He knows all the powers of government have been conferred and exist but to protect the liberties of the citizen, and hence he refuses ever to exalt the powers of government at the expense of the citizen's freedom.

"He is the man who knows that this is a Republic of States; that these States were designed to preserve the great principle of local self-government, ever the dominant passion of the Anglo-Saxon race—to safeguard and maintain the fundamental liberties of the people as the very substance of their happiness and welfare; and to this great and their sovereignty must remain forever unfettered and unimpaired.
“Hence, he reveres the memory of Jefferson Davis, Robert E. Lee and Stonewall Jackson, and that gray host who followed the gleaming folds of the Starry Cross in its glory—the flower of an unmatched chivalry who in defense of this great principle on more than a hundred flaming fields found it sweet to die.

“He is the man who loves his fellow man; who wrongs no man; who is not envious of his neighbor’s success and covets not his property; who believes in the nobility and dignity of hard work who is frugal, honest, industrious and sincere; and to whom the vanities of the world do not appeal and whom its follies cannot corrupt.

“He is the noblest product of American institutions and American life. To have produced him is our chief glory as a people. To preserve him with all his sturdy qualities as the type of American manhood for generations yet unborn, is our highest trust and responsibility.

“I have attempted to give you the substance of his creed. It is the creed of John Kirby and men like him. He has lived up to it and typified it as well as any man I know. And because he has, he deserves and possesses the proud rank and station of a Great American Citizen.”

When Mr. Kirby came to Houston in 1890 he found there, or they came shortly thereafter, John T. Scott, B. F. Bonner, John S. Bonner, T. W. House, J. P. Frost, J. S. Rise and Wm. M. Rice, R. A. Welch, Captain J. C. Hutcheson, George Hamman and a little later John Hamman, Colonel Thos. Ball, Jim West, Jesse Jones, R. M. Farrar, Frank Andrews and others. These men each learned the traits of the others; they traded; they built; they conversed; they cautioned Kirby; and they built Houston—its ship channel and its industries. They built Houston and its industries, so that today we have a city of nearly a half million people, producing natural resources, such as sulphur and oil, and manufacturing war materials, and other products for the maintenance and protection of democracy.

The only public office Mr. Kirby ever sought was, and he was elected to serve two terms, as a Representative in the lower House of the State Legislature from Harris County. He was a man charitable to the extreme. Many are the young men and women of this State that he loved so well who have been educated by his purse. To show his charitable instincts we remember a little story that happened on the very floor of his House. When he was in the Legislature the second time his financial strength was beginning to wane, yet until near the end of the session he did not draw a penny of his pay or allowances. Then one day he sent for the Sergeant-at-Arms to bring him his checks. He endorsed everyone of them and laid them on the desk of a fellow member, sick, and merely remarked: “Jim, take these and get well.”

His charities to school children were innumerable. No one could count the number of prominent Texas citizens educated from his purse.

Of course he loved his neighbors and they loved him. Many festive occasions were had in and around the old home place, when Mr. Kirby would get out the old fiddle and entertain visiting neighbors.

Lumber was his business; and it was only his great passion and deep devotion to the Constitution of the United States that brought him so many times into the political limelight, ready to defend the tenants of that great document with his life blood if necessary.

When President Roosevelt’s New Deal came into power to destroy, if possible, the same things condemned by Mr. Kirby’s ten Commandments to Labor, and other evils, Mr. Kirby saw in the New Deal a threat against the Constitution that he loved so well, and believed in so much. During this period the man’s great love for the Constitution burst into full flame and was oft expressed in public speeches.
At about that time a casual conversation was had between Mr. Kirby and Former Chief Justice Nelson Philips of our Supreme Court, and a great lawyer from North Texas. In that conversation those two stalwarts predicted a bureaucracy created by the New Deal, the attack on the Supreme Court, the reversal of many precedents, the democracy's trouble in Europe, the destruction of many democracies. Such minds! Such predictions! But may we further state that those minds likewise predicted America would survive, and democracy would live!

The political incidents of a period are not significant; the faith that guided his whole life, and his courage and alertness to defend it, are lessons in the meaning of this United States, a revelation of the reasons for our Country's greatness, and admonitions for us all. Let us hear his own confession of faith:

"It is the right to believe that Jesus Christ is the son of God without the consent of the Jews; it is the right to believe in all the miracles of the New Testament without the consent of the materialists; it is the right to be a Christian without the consent of the Jews and the right to believe in Judaism without the consent of the Christians; it is the right to be a Catholic without the consent of the Protestants and the right to be a Protestant without the consent of the Catholics; it is the right to be sprinkled without the consent of the immersionists and the right to be immersed without the consent of the sprinklers; it is the right to worship God in accordance with the dictates of one's own conscience or not to worship Him at all, without the interference of government, the citizen alone being responsible to his God for his spiritual views and conduct."

Again, he said:

"When the labors of life opened before me and the road was new I learned to revere the Constitution and to rely upon its promises. I want to see those who come after me spurred on by its incentives and assured by its safeguards. We do not need encomiums for it; we do not need praise for the dead whose wisdom and sacrifice secured it. We need an awakening trumpet to rally the living to it.

"We need resistance to a perversion of the taxing power, to the subordinating of individual energy of mind and hand, to the disbursement of public funds which subsidize a people's faith, to the assessment of penalties outside of a court room for an offense never listed in a law book.

"The call is to every patriot in this broad land who loves Liberty and Right and the Flag, and verily the Constitution itself for it is that which gives his Country its power and the Flag its purpose. Concord is looking down through the years, Washington is watching, Jefferson is pleading. Will we vindicate our history? Will we conserve the rewards of our struggles? Will we guard the government established by the patriots for our happiness and dedicated to our Liberty? Without our Constitution we die; with it we live; on forever to lead mankind in the way of achievement and of Eminence in civilization and to the heights of an ordered Liberty and noble National Life."

At another time, these were his words:

"The Constitution found the American free with vested rights in his own living. It safeguarded those rights—every one of them. It recognizes his time, and toil, and talent as his own. It protects him in his honestly acquired property and goods, and leaves the border of his energy as the limit to his production and possessions. It recognizes his right to order his own affairs in matters of personal habits and private business, as antedating the formation of any state and transcending the just powers of any government.

"That is our faith! To prevent it is to desecrate the Constitution, assail the noblest form of government ever devised, and deliver Liberty into the hands of those who would crucify it.
"Capitalism has not meant 'A perfect day,' Human frailties have existed and they will always exist, making it necessary to provide certain safeguards against any indifference to the principle of fair play. Progress towards Justice has been steadier and has gone farther under our system than under any other system in any other land. We hear vaporings of a finer welding of human interest with the government, of social face-lifting and benevolent adjustments. But bureaucracy is colder than pagan charity. It cannot be moved by a heart-beat or touched with a tear. In its metallic grasp it crushed hope and liberty.

"We don't want it.

"The thundering voice of reason calls for the re-Americanization of America. The need is for stalwart, self-reliant, red-blooded, two-fisted men with the jam-poles of Liberty, to release the beaver-dam of communism obstructing the stream of industry. Fugitive power, exercised outside of the Constitution is as threatening as the lightning bolt hurled angrily from a beclouded sky.

"Our present need is to set the stakes of the Federal Government back where the Imperial Surveyors, the Fathers of the Constitution, placed them. If the sovereign rights of the states, and the individual rights of the citizens were reestablished; if the investor were assured of a sound dollar, and the business man guaranteed that the profits of his employed savings would not be consumed in confiscatory taxes levied for unconstitutional pursuits or commandeered by the "Sinclairs" for the social purpose, there would be a revival of activity in this land with the fervor of a religious camp meeting.

"It is faith that we need."

At one time he declared as follows:

"A safe mariner will watch his chart, and likewise a thoughtful American will keep an anxious eye on his Constitution. If we are to enjoy the blessings vouchsafed to us and our posterity by that instrument, we should know its promises, its principles, its philosophy, its guarantees, and guard each and every one of them with sleepless vigilance.

"We are free in this country because our forefathers who had an intelligent concept of their rights, rebelled when those rights were infringed. We are free because the government they established—after winning their independence—embedded those rights in the Constitution. But we may not be free for we stand a chance to be deprived of our rights and lose our incentives to toil and achievement, if we permit the vicious or the foolish to destroy that Covenant.

"The Constitution is still an anchor of safety holding securely against all threatening winds and waves. It is still the foundation of the greatest, the freest, and the best government ever established on this earth. The safe-guards, the inspiring promises, and the hopeful incentives which it gives are responsible for our past amazing progress.

"I plead for a preservation of it in its full vitality and vigor, not on account of its age or origin, though it is the product of a great age and a noble people, but because of the profound truths, the program of safety, to which it is committed. These are not dead but living things; they are as essential in the future as they have been in the past. Principles never die but live on forever."

At another time he stated:

"The Constitution stands supreme over all power. Congress is its creature, and to legislate where there is no grant is usurpation and immoral and tyrannous. Every citizen enjoying the manifold blessing of the government erected for him, is obligated to defend the Constitution which is the 'law and the prophets' of his government. Upon that defense depends the preservation of our Liberty. To surrender the Constitution is as cowardly
as to surrender the flag. The same noble spirits gave birth to both. If one should perish, the other must die. ‘RESISTANCE TO TYRANNY IS OBEDIENCE TO GOD’.

Mr. Kirby’s theories of government, his beliefs on right and wrong were firmly fixed in his mind and he held rigidly to them. If today he could see these theories help lead this nation, honorably and without bloodshed, away from these troublesome times and back to the arms of beautiful democracy created by our forefathers, it is certain that his infectious smile would again light his face as it frequently did while he lived.

Long before our present troubles began to crystalize, this far-seeing man recognized them and frequently talked about them. He said:

“For ten years, as you know, I have been sounding a note of warning against the tendencies. I do not agree with Senator Bailey that we can face the presidential election of 1924 without apprehension. Of course, if the two nominations he mentions are made, that is another proposition. All of us could go forward with confidence that, insofar as the executive branch of this government was concerned, it could be conducted under the law and under the Constitution with no attempt to dethrone this Republic.

“More than that, there are fifteen million radicals in this country who believe in the dogmas of socialism, dogmas that are diametrically opposed to the structure of this government and the principles in which our forefathers believed. And the trouble about it all is that these fifteen million men are just as serious as we are. They want to promote human happiness and they really feel that there will be no happiness until the government owns everything and does everything, and the people own nothing and do nothing.

“These fifteen million radicals are not all. The colleges and universities of this Republic today are a menace to the Republic itself. There is hardly one of them—well that is not a fair statement, but many of them—far too many of them—teach socialism as a sound governmental philosophy. Not only in the colleges and universities is that done, but in our high schools it is done. Over in Texas we have a work on civics written by Professor Ashley. Professor Ashley contends that Thomas Jefferson and that bunch of patriots that met in Philadelphia in 1776 and announced to the world that all men are endowed with certain inalienable rights, among them the right to life, liberty and the pursuit of happiness, were a bunch of fatheads. Professor Ashley knows to the contrary, that no man is endowed with a right of which he cannot be despoiled by the majority. The guarantees of the Constitution, the patriots who advocated them, the declarations in that great document, the Declaration of Independence, and all the system of government we have erected thereunder upon the theory that liberty was the dearest possession a citizen had, and that the Creator had endowed each one of us with certain rights, inalienable, that is, we could not give them up, nor could they be taken away from us,—that doctrine, preached by our forefathers and adhered to for a hundred and fifty years in this country, and recognized by the intelligent and sound all over the world, in the mind and thought of Professor Ashley is a lot of bunk, and that is what he is teaching our boys and girls in the high schools of Texas,—it is possibly being taught here. School books are selected by the government and other state officials representing the school board of that state, who prescribe the textbooks which shall be taught in your public schools and in your high schools, and your colleges, and universities that receive any state support.”

With the advent of the depression and the New Deal his troubles multiplied and he lost the aid of his beloved and true advisor, John G. Logue, who died in 1933. Long after the lumber market justified, he continued to run his mills that his employees might have food, clothing and shelter.

His love and affection for his employees was so great, his desire to maintain the organization created by him so intense, that he permitted these mills to run long after good business judgment permitted.
His personal fortune exhausted by his charitable, endorsements and aid to his friends, he now turned to his friend the Santa Fe Railroad for additional funds to carry on.

During the depression he borrowed nearly Three Million ($3,000,000.00) Dollars, to pay the wages and salaries of his employees. Finally the end came about May, 1933.

The Kirby mills were now still and his all was swept before him. Yet he never lost his smile nor his love for the Constitution and what he thought was right.

Now, his enterprises tottering on toward bankruptcy, came into the picture his friend, B. F. Bonner, and together they tried to organize some companies to pay Kirby's honest debts and save his equities. For a while it looked like the effort would be a success, but values were falling fast, the bank holiday came along and bankruptcy was the only recourse.

Following that came the placing of his company in a Receivership in Judge T. M. Kennerly's Court. McDonald Meachum was appointed Receiver. He saw to it, as Receiver, that Mr. Kirby's organization was maintained intact.

When, at this time, social security became a burning issue, Mr. Kirby again plunged into the fray and wrote the following on that question:

"We need not challenge the sincerity of those who would make the government responsible for the social security of the citizen. Perhaps they mean well. But their plans strike at the life and character and constitution of our country.

"All of us agree that it would be desirable to have every person in the United States fullfashioned and well-provisioned. That would make America a paradise. But 'The more abundant life' of which we hear so much will not result from statutory or government ordered prosperity. It will come as it has always come from the efforts of willing, intelligent, persevering workers striving in a free field to overcome circumstances and secure a more favorable situation for themselves.

"The Constitution has established the best form of government ever devised by mortals for the promotion of man's well being. Monuments of achievement erected under it astound those whose genius have contributed to the progress of other lands. It has provided more comfort, and greater security, and a choicer economic reward than has ever been obtained everywhere else by any known system. With the Constitution as a plan, America, embracing a little more than 6% of the population of the globe has the buying power of all Europe. Four-fifths of the comforts and conveniences that make life easier are found in the homes of America.

"Our record of achievement, in a free economic and industrial field should put those to shame who are taking advantage of a period of international depression to attack our incomparable institutions and attempt to undermine and destroy our form of government.

"Neither my heart nor my judgment will permit me to remain silent while these unwarranted assaults are being made. The changes proposed will slow down individual achievement, weaken the national character, and put liberty on the spot. The government was created to safeguard the citizen in his inalienable rights, not to fix an 'attainment allowable' for him. Those rugged patriots who fought the Revolution poured out their blood and treasure for the privilege of governing themselves. They claimed the possessions they had worked for and the right to enjoy them.

"Read these words from the declarations they issued after going to war with Great Britain:

"'We fight not for glory or conquest' but 'for the protection of our property, acquired solely by the honest industry of our forefathers and ourselves.'"
When the Constitution was established, the hero who commanded the Continental forces presided over the convention, and the faith that burned in the bosoms of his soldiers on the battlefield pervaded that hall where imperial minds were assembled to form a new government. A Republic was erected because that was the choice of most of the delegates, and the effort was made to provide barriers against every possible encroachment upon the private rights of the citizen. James Madison said safeguarding liberty was the primal object of the Convention.

No provision was made for the establishment of a government bureau to look after the social security or private well being of the individual. Nationally incubated life was not in the plan. Some insist that the General Welfare clause of the Constitution provides for these socialistic and communistic activities. But that position was shattered at the beginning of government under the Constitution by those who established it.

That eminent jurist, Judge Story, said: ‘If the power to tax to provide for the common defense and general welfare was a substantive power the government of the United States is, in effect, a government of general and unlimited power.’

All outstanding statesmen, including James Madison, Andrew Jackson, James Monroe, Alexander Hamilton, and Chief Justice Marshall said the powers parted with by the states were few and enumerated.

The proposed system of bureaucratic planning and government is without constitutional sanction and features of it are without economic reasoning. To bring about a more abundant life by forcing a reduction in the supply of human necessities is a strange and foolish contrariety. It demobilizes a tremendous productive force including millions of American laborers and millions of American dollars. Never before in the history of the world was scarcity required by the government to compel a situation of plenty.

It may be an intricate problem to get an equitable distribution of a full production. But it is more difficult to spread an abundant table where the supply of foods is short.

Planned economy, ordered life, fixed security, all of the heralded schemes by would-be sociologists, opportunists, and college-tailored adjustors, are unconstitutional, un-American, and unproductive of favorable results. They will asphyxiate forces that keep the wheels of commerce spinning and factory furnaces humming. They will impoverish a mighty army of agricultural workers. They will permanently increase unemployment and render the situation more distressing in a land that has known a more abundant life than ever existed anywhere else on this globe.

The control of the soil by the Federal administration strikes at a principal deeply rooted in the American heart. It doesn't belong under our flag.

Judge Story said: ‘In a free government almost all other rights would become utterly worthless if the government possessed an uncontrollable power over the private fortune of every citizen.’

But it doesn't possess that power.

Those men who wrote our great charter of government were not impractical men or politicians. They labored by the light of history, and avoided with meticulous care the errors made in other attempts at free government. The bureaucratic despotism and unwise economic planning of Constantine and Diocletian were known to them. Madison and Franklin and others of them were familiar with ancient history and all the attempts to establish and maintain so-called Democracies in the old world. Drawing their inspiration from a fountain of wisdom and knowledge and experience they formed a Compact suitable to self-dependent, rugged redblooded men. It was a government of opportunity and not of paternalism that they formed.
"The late Woodrow Wilson spoke for the real American when he said:

"I do not want to live under a philanthropy. I do not want to be taken care of by the government. I want only to have right and justice prevail. . . Give me right and justice and I will undertake to care for myself. I will not live under trustees if I can help it. I do not care how wise or patriotic the trustees may be. I have never heard of any group of men in whose hands I am willing to trust the liberties of the American people."

"We need that sentiment at this hour when so many of our countrymen are consenting to a system of Federal regimentation. The domain of liberty has no room in it for the footprints of a bureaucratic trustee. We should breathe again the spirit of the Pilgrims who established their own social security in an unfriendly wilderness. We should move to repossess the courage of those men who crossed the icy Delaware that winter's night to fight for their rights with Washington.

"Without that spirit we will grow weaker and more dependent. With it we may look out upon this broad, beautiful, and productive land of ours, the home of the brave and say:

"'My County, 'tis of Thee
Sweet land of Liberty
Of Thee I sing.'"

"Freedom is our birthright. When it was first challenged on this continent Washington defended it with his sword. When it was again threatened by anarchy in those days following the gaining of our independence, that great citizen and soldier lent his wisdom to his Country and aided in establishing the Constitution in which liberty was safeguarded."

Although bitter in his denunciations of the New Deal policies, John Henry Kirby had great faith in the future of his country and in an address before a Jefferson Day Dinner in Houston on April 14, 1934, declared:

"Perhaps some of you think that constitutional liberty is menaced by the brain trust, by the college professors, by socialistic experimentation by red Republicans of mediocre attainments who occupy seats in the cabinet, by red Republican Senators who assume to give advice to the President, but I say to you, 'Be ye not afraid.' There is in the White House a patriotic American of sound judgment and high purposes. In his good time he will sweep away the shadows that menace and restore the republic, and with it the effectiveness of every provision of our Federal Constitution, to the end that Constitutional liberty may live on forever."

Shortly after that when attacks were being made on the Supreme Court, public sentiment had it that Mr. Justice Frankfurter, then Professor of Harvard Law School, was advising the President and Mr. Kirby evidently believing this, said in one of his public speeches:

"From the day that George Washington was sworn in as president of the United States, down to Herbert Hoover's retirement, the Constitution was America's compass and guide. Every chief executive had taken an oath to preserve, protect and defend it, and every one had honored that oath. But the instrument is now without favor in the highest administrative circles and there is being extended the purpose to govern us, not according to its terms but by the everchanging and arbitrary rules of an irresponsible, impractical, foreign-minded Brain Hierarchy."

When the United States Supreme Court invalidated the N.R.A., Mr. Kirby felt his convictions had been sustained. He and his friends held a victory meeting to celebrate the occasion. It is interesting to notice the account of his speech at this meeting, written by a friend of all lumbermen, Jack Dionne, as follows:

"'The Supreme Court decisions holding the N.R.A. unconstitutional opened the door of hope for all America,' said John Henry Kirby, in his address at the Southern Pine meeting in New Orleans, June 3. 'The depression
aggravated and prolonged by the unconstitutional measures of President Roosevelt, acquiesced in by the Congress, is ended. What the country is suffering from has been not the depression, but the 'oppression' emanating from a bureaucratic government at Washington. If the unanimous decision of the Supreme Court, holding the National Recovery Act unconstitutional, means a return to a government of laws under the Constitution, and an abandonment of government by bureaus, boards, commissions and administrations, then it will not be long until prosperity will diffuse itself throughout all industry, and there will be a full return of remunerative and gratifying employments.

"We still have grave problems before us as citizens and as members of the lumber industry, which cannot be minimized. I agree with all Mr. Sheppard and Mr. Kurth have said advising against reducing wages and lengthening hours of operation. It would be a tragedy, indeed, to permit a return of conditions in our industry that would minimize the rewards of labor and put our neighbors and competitors on the pauper list."

"Mr. Kirby asserted that undue lengthening of operating time by mills would bring an excess of production, and result in a decrease of the price of lumber below production costs. 'This would mean misfortune for the producers, their employers, their communities and their people,' he said. 'I am confident the members of the southern pine industry in the present situation will do nothing to militate against the welfare of their neighbors or of the people of this country or our government.' In concluding Mr. Kirby said:

"'The makers of the Constitution of the United States 150 years ago knew what they were doing. The Constitution they formulated served for the promotion of the people's welfare and progress then and it serves just as effectively today. That was in the 'horse and buggy' days that the Constitution was formulated. The makers of the Constitution wrote into it adequate protection and guidance of virtually every essential interest and activity of the people and under that document the American nation, in 150 years, has come to the highest achievement of any nation or people on earth. The President of the United States is the only officer in the entire government who must take an oath to 'preserve, protect and defend' the Constitution of the United States. All other officials in any other branch of the government take an oath merely to 'uphold' the Constitution.'

"The speaker praised the Supreme Court's decision on N.R.A. and criticized some of the theories of government now being advanced by 'some of the young men advisers of President Roosevelt.'"

When the time came to reorganize his lumber company, the Santa Fe had been held by all the Courts in the land to be owner of the majority of the stock. There were outstanding bonds and there was outstanding stock but common claims and laborers' claims had been paid off during the receivership.

Rumbling came in from all over the country that the bondholders were about to form a bondholder's committee. Mr. Kirby sent for the lawyer handling the reorganization and instructed him that there should be no bondholder's committee; that the expense was unnecessary and that all must be treated fairly. In the meanwhile the confidence of the Baltimore Bankers in Mr. Kirby had been restored, probably by the matter reflected by Mr. Richter, but in any event they helped in seeing that no bondholder's committee was organized in their fair city where many of the bonds were held. One large bondholder was a metropolitan city, and the bonds were held in trust to cut grass on beautiful parks, where growing Americans might play. Another was a competitor railroad. Both the bondholders stood with Mr. Kirby and the Santa Fe for fair play to all.

The Santa Fe and Mr. Kirby concluded that everybody's rights must be protected. Judge Kennerly, and Senator Meachum as Receiver, likewise felt that everybody's rights must be protected. The Southern Pacific Railroad Company owned a large group of these securities and they aided much in securing confirmation of a proper plan. And that is what was done.
Among other problems in this reorganization were the difficulties brought about during the period when temporary owners had Mr. Kirby's property, and bonds were sold at less price than the sinking funds paid for them. This bonded indebtedness has since been paid. The stock has gone up. The mills are running, and the employees are happy again.

By then Mr. Kirby was old and feeble and unable to start a new industry. His bankruptcy had finished him. An old age pension was suggested but the Santa Fe, not wishing to embarrass him, arranged an honorable position for Mr. Kirby without serious duties, and with a proper salary.

Mr. Kirby fast neared his end. On his last trip back to the sand hills and piney woods, where this man who loved his Constitution and his God was born, he said to his faithful negro servant, "Before we leave, let us look around good. We won't be coming back." He died in the quiet of the evening on November 9, 1940.

On his desk was found a little speech by Senator J. W. Daniel on the unveiling of the recumbent figure of General Robert E. Lee. It is only fitting that the following quotation from his speech, so often read by Mr. Kirby be given:

"Come we then today in loyal love to sanctify our memories, to purify our hopes, to make strong all good intent by communion with the spirit of him who, being dead, yet speaketh. Come, child, in thy spotless innocence; come, woman, in purity; come, youth, in thy prime; come, manhood, in thy strength; come, age, in thy ripened wisdom; come, citizen; come, soldier; let us strew the roses and lilacs of June around his tomb, for he, like them, exhaled in his life Nature's beneficence, and the grave has consecrated that life, and given it to us all. Let us crown his tomb with the oak, the emblem of his owm strength, and with the laurel, the emblem of his glory, and let these guns, whose voices he knew of old, awake the echoes of the mountains, that Nature herself may join in his solemn requiem.

"Come, for here he rests and--

'On this green bank, by this fair stream,
We set today a native stone
That memory may his deeds redeem
When like our sires, our songs are gone.'

"Come, for here the genius of loftiest posey in the artist's dream and through the sculptor's touch, has restored his form and features—a Valen­tine has lifted the marble veil and disclosed him to us as we would love to look upon him—laying the flower of knighthood, in 'joyous garb.' His sword beside him is sheathed forever. But honor's seat is on his brow, and valor's star is on his breast, and the peace that passeth all understanding descends upon him. Here, not in the hour of his grandest triumph of earth, as when mid the battle roar, shouting battalions followed his trenchant sword, and bleeding veterans forgot their wounds to leap between him and his enemies, but here in victory, supreme over earth itself, and over death, its conqueror, he rests, his warfare done.

"And as we seem to gaze once more on him we loved and hailed as a chief, in his sweet, dreamless sleep, the tranquil face is clothed with heaven's light, and the mute lips seem eloquent with the message that in life he spoke:

"'There is a true glory and a true honor; the glory of duty done, the honor of the integrity of principle.'"

This memorial, therefore, is a mark of respect for this Grand Old Man of Texas, and is a record of our love and affection for him to be spread upon the Journal of the Senate of Texas.